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Cultural influence on the assessment of adjudicative competency: A grounded theory

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CULTURAL INFLUENCE ON THE ASSESSMENT OF ADJUDICATIVE COMPETENCY:
A GROUNDED THEORY

Presented to the Faculty of
Antioch University Seattle

In Partial Fulfillment
Of the Requirements of the Degree
Doctor of Psychology

By
Shawn D. Curtis

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CULTURAL INFLUENCE ON THE ASSESSMENT OF ADJUDICATIVE COMPETENCY:
A GROUNDED THEORY

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ABSTRACT

CULTURAL INFLUENCE ON THE ASSESSMENT OF ADJUDICATIVE COMPETENCY:

A GROUNDED THEORY

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The Washington State Supreme Court has strongly recommended that culture should be considered as a factor for multicultural defendants when questions regarding competency to stand trial have been raised and an evaluation is ordered by the Court. This represented a departure from prior decisions, which have ignored culture as a factor for consideration in such cases. Though culture had long been identified as a core pillar within clinical psychology, research in the sub-field of forensic psychology has shown a dearth in the literature regarding culture as a factor in forensic assessment. Despite the recent cases in Washington State, the criminal justice system generally remained silent on how to address culture, which led to a form of systemic cultural suppression. Given the dichotomy that exists at the intersection of the criminal justice system with psychology, forensic examiners have struggled in their efforts to address culture, which has become a nuisance variable. Using a grounded theory methodology, this study identified a spectrum of reactions that have risen from the attitudes and strategies forensic examiners have developed in their response to systemic constraints, bias, individual case and defendant characteristics. Furthermore, the identification of examiner reactions within the context of multicultural cases is a critical step towards developing best practice guidelines on

how these cases should be addressed. This dissertation is available in open access at AURA, <http://aura.antioch.edu/> and Ohio Link ETD Center, <https://etd.ohiolink.edu/etd>.

Keywords: Forensic Psychology, Competency to Stand Trial, Adjudicative Competency, Multicultural, Cross-Cultural Assessment, Grounded Theory, State v Sisouvanh

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This dissertation is dedicated to my greatest accomplishment, my son, Rilen.

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CHAPTER I: INTRODUCTION

The purpose of this constructivist grounded theory study was to identify how forensic examiners perceived their work when conducting competency to stand trial evaluations with multicultural defendants. As represented in the literature, culture has long been recognized as a fundamental aspect of what it is to be human. While ongoing debate has continued about how to address it in various contexts, culture has been recognized as an inexorable dimension within the practice of clinical psychology. Contrary to clinical work however, both forensic psychology and the criminal justice system have been delayed in acknowledging culture as a relevant dimension in assessment disregarding or omitting it from consideration. That is until the recent Washington State Supreme Court decisions of *State v. Sisouvanh* (2012) and *State v. Alexander Ortiz-Abrego* (2017), wherein the Court might be signaling a shift toward recognizing culture as a factor for consideration in competency to stand trial evaluations.

Diversity, Culture, and Forensic Evaluation

The legacy of ever-increasing diversity within the population has provided the United States with one of the most complex cultural identities in the world. By 2050, people of color, minority ethnicities, and immigrants are projected to comprise nearly half of the population in the United States (United States Bureau of the Census, 2012). While the continued exponential demographic shifts within the population can provide increased cultural richness and potential growth in understanding between groups, it may also be a source of conflict within the dominant society, and between culturally diverse groups.

Culture has often been defined as a complex construct of socially transmitted ideas. It impacts feelings and attitudes that shape behavior, define perceptions, and provide for a context to understanding experiences. The vastness of cultural experience in the United States has

created opportunities for cross-cultural encounters to take place, which have acted as a principal agent of change (UNESCO, 2009).

Cultural encounters occur across all social situations and have frequently involved multiple social systems, including the mental health and criminal justice systems. The intersection of culture, which directly impacts presentation and interpretation of symptoms of psychiatric distress (Lewis-Fernández et al., 2014), with the criminal justice system has sparked debate over the pros and cons of how culture should be considered in forensic psychological assessment (Golding, 2002; Kirmayer, Rousseau, & Lashley, 2007). Given the vast opportunities and the complexities of the phenomenon of cultural intersection with the law, one can become quickly overwhelmed with where to begin conducting research. Since the most common psychological assessment ordered by the court has centered around questions of a defendant's competency to stand trial (Hoge, 2016), adjudicative evaluations of competency to stand trial appeared to be an ideally suited starting point. By exploring questions around how culture impacts the evaluation process and what, if anything, forensic examiners are doing to address assessment with multicultural defendants, one can begin to understand how to address what will continue to be the growing need for competent multicultural forensic assessment.

Competency to Stand Trial

Under the 14th Amendment, being competent to stand trial is a guaranteed constitutional right of all defendants in the United States regardless of race, color, religion or creed, national origin or ancestry, gender, sexual orientation, physical or mental disability, veteran status, genetic information, or citizenship (Petersilia, 2017). Under the 14th Amendment competency to stand trial is such a fundamental issue to the court process that if a defendant's competency were to be called into question, all criminal court proceedings would be immediately halted and could

not commence until the requirement that the state make every effort to ensure that the defendant is determined competent to stand trial was met (Mossman et al., 2007).

Washington State law requires that a qualified expert conduct a forensic psychological evaluation to determine competency, and if necessary, utilize restorative treatment to assist the defendant to meet the standards of competency (RCW 10.77.090). Without meeting the standard for competency, a defendant cannot adequately defend against legal charges. This is incredibly important since not only would the prosecution of a mentally incompetent defendant violate the basic constitutional rights guaranteed by the due process clause of the Sixth Amendment, it would also undermine the fundamental societal goal of equal justice (Melton, Petrila, Poythress, and Slobogin, 2007).

Power and Oppression in the Criminal Justice System

When discussing issues around equality within the criminal justice system, themes of power and authority are inherent to the conversation. Cole (2003) noted that power differentials driven by prejudice have impacted how defendants from marginalized populations have been unfairly treated at all stages within the criminal justice system. As an example of systemic inequality, Cole referenced the well-established fact that people of color have been disproportionately represented in the nation's prisons. Cole also showed that this disproportionality has been correlated with a contribution to prejudiced stereotypes that immigrants, people of color, and especially young Black men have a higher potential to become criminals; which increases the likelihood of a biased administration of the criminal justice system against them (Cole, 2003).

Those who hold power and authority within the system have been a critical driving factor for systemic inequality. Davis' (1998) research identified that prosecutors, more than any other

official in the criminal justice system, have had the most direct impact on racial and ethnic disparities found throughout the system. According to Davis, the power of prosecutors has stemmed from their near complete control over charging decisions, the plea-bargaining process, and the establishment of policy priorities; that directly impact how the criminal justice system approaches questions around defendant mental health, including questioning their competency to stand trial. Furthermore, Davis argued that courts have consistently upheld and sanctioned prosecutorial discretion, which has been instrumental in establishing covert and non-objective practices. Although racial and ethnic disproportionality in the system have continued to rise, discrimination has become much less overt than it had been in the past (Alexander, 2010). The continuation of hidden systemic prejudice and support from the courts has made it nearly impossible to mount successful legal challenges of discrimination in cases involving prosecutorial discretionary decision-making (Davis, 1998).

One other important factor when considering minority over representation in the criminal justice system is in how bias enters into jury verdicts. Following the Department of Justice's investigation into the grand jury's decision to not indict a white police officer in the shooting of an unarmed Black civilian in Ferguson, Missouri in 2014, explicit and implicit racial bias were identified as factors that impacted the jurors' decision (Elek & Hannaford-Agor, 2015). Explicit bias encapsulates the intentional and overt form of prejudice that most people recognize, whereas implicit bias is a form of bias that occurs when associations are made between a group of people and specific traits that then operate without self-awareness to affect perceptions, understanding, judgment about, or behaviors toward individuals from the other group (Greenwald & Banaji, 1995).

The findings in Fergusson were not unique, and implicit bias has been shown in several studies to impact jury decisions. Levinson and Young (2010) found that study participants who observed evidence of a robbery and a dark-skinned suspect were more likely to evaluate the evidence as an indication of guilt, when compared to participants who observed the exact same evidence but associated with a light skinned suspect. Levinson, Cai and Young (2010) used a timed implicit association test to examine associations of guilty and not guilty based on random faces of Black and white people. Results showed the participants implicitly associated guilty and Black when compared to guilty and white, leading the researchers to ask if presumption of innocence is instead an implicit presumption of guilt for Black defendants (Levinson, Cai & Young, 2010). This question of presumption of innocence bias prompted Young, Levinson, and Sinnett (2014), to examine if jurors who received court instructions that called for them to consider the defendant to be presumed innocent until the burden of proof has been met achieved the goal of equality in the decision process. Instead, the researchers found that discussion of presumption of innocence primed the study participants to attend to Black people's faces at a significantly faster rate than faces of white people (Young, Levinson, & Sinnett, 2014).

Legacy of Legal Oppression

Since the dissenting opinion of Justice Harlan in the 1896, U.S. Supreme Court landmark decision in *Plessy v. Ferguson*, the criminal justice system has closely identified with a perspective of objectivity and equality. Justice Harlan called the U.S. Constitution "color-blind", which has become a mantra for the criminal justice system that has touted an application of that standard in all cases regardless of race, ethnicity, or minority cultural group (Hicks, 2004; Alexander, 2010). Yet despite the self-proclamation that the criminal justice system is objective, equal, and color-blind; a disproportionate and continually growing number of prison inmates in

the United States are from immigrant and minority populations, suggesting that the color-blind mantra of objectivity is a fallacy (Davis, Erez, & Avitabile, 1998).

The U.S. Bureau of Justice Statistics for prisons showed that “on December 31, 2013, about 37% of imprisoned males were black, 32% were white, and 22% were Hispanic. Among females in state or federal prison at year-end 2013, 49% were white, 22% were black and 17% were Hispanic” (Carson, 2014, p. 8). These percentages were noticeably disproportionate for the Black and Hispanic populations when compared to national census data on race, which showed 63% of the population as white, 17% as Hispanic, and 13% as Black during the same time period (United States Bureau of the Census, 2012). This means that there was a 0.87% incarceration rate for whites, a 1.51% incarceration rate for Hispanics, and a 3.83% incarceration rate for Blacks (Landgrave & Nowrasteh, 2018).

Disparities in Psychiatric Diagnosis

Providing a psychiatric diagnosis is a critical statutory component to establishing a threshold to evaluate competency to stand trial in nearly every state. However, racial and ethnic disparities in rates of psychiatric diagnosis have been reported for decades. This disparity may partially explain a disproportionate representation of minority groups in competency evaluations. In perhaps the most comprehensive study of this issue to date, Schwartz and Blankenship (2014) conducted a literature review of the empirical research on racial disparities and psychiatric diagnosis spanning a 24-year period. A clear and pervasive pattern of disparity in the diagnosis of serious mental illness was observed, with African Americans more than four times as likely, and Latino Americans more than three times as likely to be diagnosed than Americans with European or Asian ancestry (Schwartz & Blankenship, 2014). It should be noted that Asian American populations were underrepresented in the studies when compared to the other

demographic groups. This may be due to cultural differences that involve seeking less interaction with mental health systems and misunderstanding service use among Asian immigrant populations (Abe-Kim et al., 2007). The researchers noted that when compared internationally, the “trends may suggest how misdiagnosis of psychotic disorders more commonly transpire with immigrant ethnic minority consumers receiving mental health services compared to consumers from communities sharing a majority racial and ethnic background” (p. 138).

Schwartz and Blankenship (2014) noted that no one explanation has been found to explain racial and ethnic disparities in diagnosis of serious mental illness. However, the authors reported the most frequent hypotheses from the literature. The majority of the authors in the study asserted, “the cause involves racial diagnostic bias, which refers to clinicians making unwarranted judgments about people on the basis of their race” (Feisthamel et al., in Schwartz & Blankenship, 2014, p. 139). Although individual clinician bias may be an important factor, the research has been inconclusive to date (Schwartz and Blankenship, 2014).

A less controversial explanation that was also frequently noted was:

A sociocultural pattern may exist for consumers of color themselves related to a combination of less access to healthcare, more distrust in mental health professionals and systems, higher social stigma associated with mental illness, and more culture-specific methods of addressing personal distress. This pattern may result in increased symptomatology once consumers of color do access mental health treatment, and ultimately more severe (e.g., psychotic disorder) diagnoses by clinicians. (p. 139)

This second explanation for the disparity places the onus at a systemic level and reduces culpability on clinicians while increasing responsibility for the increase in diagnosis on the consumers. Unfortunately, this explanation runs the risk of implying that instances of serious

mental illness are higher in populations of color, which has not been substantiated. As the authors point out, it is critical to recognize that this literature review demonstrated that too little research has been devoted to understanding whether clinician racial bias, clinician misinterpretation of symptomatology, or another factor is responsible for this pattern (Schwartz & Blankenship, 2014). Until a more substantiated interpretation of the findings is made, it is critical that psychologists be aware of this trend in both clinical and forensic applications.

Discrimination and Forensic Psychological Opinion

Discriminatory practices have also directly pervaded efforts where psychological opinion has been used to satisfy a criminal justice process. Pirelli, Gottdiener, and Zapf (2011) found that those believed to be incompetent to stand trial were most likely to be minority males, particularly Black, Hispanic, and non-white immigrant populations with limited education. While minorities make up the majority of those opined as incompetent, they were also overrepresented as defendants identified as malingering mental health symptoms (Pirelli et al., 2011). Rogers (2008) estimated that of all defendants evaluated for competency, only 20% were found to be malingering symptoms of mental illness. By contrast, as many as 65% of defendants from races and ethnicities other than white were estimated to be malingering (Sbordone, Strickland, & Purisch 1996).

Assuming the continued growth in immigrant and minority populations as indicated in the census data presented at the beginning of this chapter and taking into consideration and assuming no significant change to the current processes in the criminal justice system, diversity in incarceration rates will continue to grow. This growth will prompt an even greater need for multicultural forensic evaluations. Yet, despite the growing cultural diversity and numerous examples that have placed culture and diversity at the center of the tumult around equality in the

criminal justice system (Inciardi, 2007; Alexander, 2010; Hendricks, Byers, & Warren-Golden, 2011), the importance of defendant cultural diversity as a formal aspect of evaluative and adjudicative processes in cases involving competency to stand trial have largely been ignored (Hicks, 2004; Kirmayer et al., 2007).

Despite the high likelihood that psychologists will continue to face a growing need to conduct culturally competent forensic evaluations, they have had very little guidance as to how to address multicultural issues while working within the constraints of a biased legal system (Hicks, 2004; Kirmayer et al., 2007; Goldyne, 2007). This dichotomy has led to many examiners feeling conflicted, confused, or annoyed when faced with an evaluation of a multicultural defendant. Culture has in essence become a nuisance that, for reasons to be explored in later chapters, examiners simply are not sure how to address.

There is a debatable argument to be made that suggests that forensic examiners may have failed in their duty to provide accurate information to the court when differences in a defendant's culture were not properly taken into account and may have impacted the competency to stand trial evaluation. This could potentially cause significant harm to defendants and also mean that the forensic examiners have contributed to the ongoing degradation of the criminal justice system's mission to provide equal justice for all. It is therefore our ethical responsibility to educate and affect needed change.

Through the exploration of how examiners currently consider cultural factors in competency to stand trial evaluations, and by identifying underlying variables that impact the process, this study identifies how examiner attitudes toward multicultural competency evaluations have been impacted. Ultimately it is the goal of this research to help examiners become more aware of how they are reacting to multicultural evaluations, what variables are

impacting them, and ultimately aid in establishing best practices to guide forensic evaluations as our society becomes more and more diverse.

CHAPTER II: LITERATURE REVIEW

With an estimated 60,000 defendants referred for pretrial assessment, competency to stand trial evaluations are the most common pre-trial evaluation referred by the criminal court system in the United States (Hoge, 2016). A defendant's competency to participate in his or her own trial and to be able to enter a plea has been a long-held principle in western law dating back to mid-17th century English common law. As a response to defendants who stood mute and refused to enter a plea, the court ordered juries to decide if the defendant was being obstinate or was mentally or physically unable to speak (Mossman et al., 2007; Melton et al., 2007). If found obstinate, the defendant would be subjected to *peine forte et dure*, a torturous process in which heavy weights were stacked on the defendant until he spoke or died (Jenkins, 2010, & Mossman et al., 2007).

In the present American justice system, the practice of *peine forte et dure* would likely evoke strong negative feelings among the people and has been labeled as an abhorrent practice. The negative reaction to this form of torturous confession comes from shared mainstream cultural values that have evolved over time but originate from the foundations of the United States Criminal Justice System found within the Constitution and Bill of Rights. The Bill of Rights set precedent that citizens have protections when subjected to the criminal justice system. To reach consensus on passing the Constitution in 1791, representatives from each of the states demanded that citizen liberties and protections within the criminal justice system be specifically listed (Zinn, 2003). As was true then, so too is it today, that there continues to be a degree of trepidation that as the federal government continues to grow and change over time, individual liberties could disappear (Brown, Esbensen, & Geis, 2007).

Within the United States, a fundamental expectation for the protection of all citizens to fair and equal administration of justice without governmental interference exists (Williams, 2010). The Fifth and Fourteenth Amendments of the United States Constitution define this protection through establishing procedural and substantive due process. Procedural due process protects individuals from the potential coercive power of government by ensuring that adjudication processes, under valid laws, remain fair and impartial; whereas substantive due process protects individuals against unconstitutional laws (Williams, 2010). The 5th Amendment ensures procedural due process through protections such as those against illegal search and seizure, self-incrimination, and double jeopardy; while the 14th Amendment ensure substantive due process by guaranteeing equal protection under the law to all citizens.

However, the concepts involved in due process have not remained stagnant. Instead, interpretation and extent of due process rights, and how and when due process is applied, continues to be interpreted and reinterpreted through the development of case law. One critical example of the U.S. Supreme Court's reinterpretation of due process that directly relates to this study involved the establishment of criteria for the determination of competency to stand trial in the landmark case of *Dusky v. United States*, 362 U.S. 402, (1960).

Dusky v. The United States

The federal and state laws that address issues of competency to stand trial were first established with the landmark Supreme Court decision in *Dusky v. United States* (1960). Generally referenced as the Dusky Standard, the findings in the case affirmed that a defendant has the right to have his or her competency to stand trial confirmed prior to trial whenever is called into question. The Court's determination set the critical importance of competency to

stand trial as a foundational due process right required prior to the commencement of any legal procedure.

In reflection on the Dusky Standard, Melton, et al. (2007) highlighted the importance of competency to stand trial as a foundation of American criminal justice by stating, “even a proceeding that produces an accurate guilty verdict would be repugnant to our moral sense if the convicted individual were unaware of what was happening and why” (p. 124). In addition to identifying the due process role of competency to stand trial, the Court also provided wording in the decision that was critical to addressing this issue in practice, and established a two-pronged test for determining competency by verifying: (1) that a defendant has the capacity to consult with an attorney and thereby aid in his own defense, and (2) that the defendant has a rational and factual understanding of the court proceedings (*Dusky v. United States*, 1960; Roesch, Zapf, Golding, & Skeem, 1999; Mossman et al., 2007).

Despite the seemingly simple clarity of the two-pronged test for competency, the *Dusky* decision left much open to interpretation by having established a minimum standard, rather than a detailed guideline for competency (Nussbaum, Hancock, Turner, Arrowood, & Melodick, 2008.) While the *Dusky* decision established a definition for competency, it did not define what could constitute a basis for incompetency, nor how to evaluate for it. Questions surrounding competency to stand trial and how mental illness, personality, maturity, developmental and intellectual disability, ignorance, or culture can impact it need to be answered through additional state or federal legislation and case law that drew upon and applied the *Dusky* Standard (Zapf & Viljoen, 2003; Mossman et al., 2007).

U.S. Supreme Court Post Dusky

Pate v. Robinson

Just six years after the Dusky decision, *Pate v. Robinson*, 383 U. S. 375 (1966) was before the Supreme Court and would serve to further define the Dusky Standard. In this decision, the U.S. Supreme Court confirmed the importance of competency to stand trial and established fundamental procedures to prove a defendant's competency. The court held that the failure to observe procedures adequate to protect a defendant's right not to be tried nor convicted while incompetent to stand trial deprived him of his due process right to a fair trial.

In opining on the originating state statute of Illinois that mandated a pretrial competence hearing to present and evaluate evidence of *a bona fide doubt as to the defendant's competence*, *Pate v. Robinson*, established that the states held the power to determine the means by which the Dusky Standard should be applied, and along with it what the individual factors that influence a person's competency to stand trial should be. However, the court stopped short of prescribing a general standard procedure with respect to the nature or *quantum* of evidence necessary to show incompetency. It was instead in the details of the individual factors where the work of parsing out how competency and incompetency would be determined for defendants.

Drope v. Missouri

In its decision in *Drope v. Missouri* 420 U.S. 162 (1975), the U.S. Supreme Court expanded on the fundamental importance of competency to stand trial within the criminal process. The Court stated that competency was “fundamental to an adversary system of justice (and that) it has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with

counsel, and to assist in preparing his defense may not be subjected to a trial” (Section II, Para 1).

The Court’s decision established a low threshold to question a defendant’s competency to stand trial and created a third prong to the Dusky Standard, that the defendant must be able to aid in his own defense. This decision essentially created the necessity for a competency evaluation and hearing in every case where the question of competency was raised.

When considering how culture impacts the competency to stand trial evaluation, the *Drope* decision becomes critical for two reasons. First, a defendant’s ability to work with an attorney can be jeopardized for several reasons aside from mental illness. Cultural misunderstanding, language barriers, and even educational differences between the defendant and the attorney can create significant challenges to the attorney and defendant relationship. Secondly, the *Drope* decision allowed for any unusual behavior or belief of the defendant to be grounds to trigger a competency evaluation. Cultural customs and beliefs that differ from those of the dominant society may appear unusual, or possibly misinterpreted as symptomatic of a mental illness.

Cooper v. Oklahoma

Following the *Drope* decision, the U.S. Supreme Court attempted to provide additional protection for the due process rights of a defendant in the decision rendered in *Cooper v. Oklahoma*, 517 U.S. 348 (1996). The Cooper decision identified *preponderance of the evidence* as the threshold for determining incompetence, rather than the much higher threshold of *clear and convincing evidence*, which had previously been applied. By lowering the threshold, behaviors or beliefs of the defendant deemed to be abnormal, regardless of their true etiology,

could become grounds for a trial not proceeding so long as the defendant was determined to be more likely than not incompetent.

Jackson v. Indiana

Once a defendant has been found incompetent, it is common practice for a court to remand the defendant for psychiatric restoration to competency. However, the question of how long the State can hold a defendant for competency restoration was undetermined until examined by the U.S. Supreme Court in *Jackson v. Indiana*, 406 U.S. 715 (1972). The Court's decision held that to ensure that due process rights of the defendant were not violated, the nature and duration of a defendant's commitment that was based solely on incompetence must be for a reasonable period of time, and must be justified by showing progress toward a return to competence (Jackson v. Indiana, 1972).

While a substantial ruling in protecting defendant rights, the Court did not specify as to the length of time considered reasonable (Roesch et al., 1999). This issue could present as a critical concern if a defendant comes from a culture that presents with behaviors or has a belief system that, when taken out of context or misunderstood, can be misdiagnosed as a symptom of a mental illness. This can act as a barrier for the defendant to demonstrate an understanding of the concepts necessary to show competency to stand trial. In this scenario, without the decision of *Jackson v. Indiana*, the multicultural defendant would have been remanded for restoration indefinitely due to a misinterpretation of behavior or beliefs derived from the defendant's cultural experience. Conversely, efforts to restore a multicultural defendant in a timely manner, but who has been misdiagnosed, could result in medication and other interventions that may be inappropriate, as well as the injustice of further delay in their legal proceedings.

Ake v. Oklahoma

One exceptionally important U.S. Supreme Court decision with potential relevance to the question of culture was in *Ake v. Oklahoma*, 470 U.S. 68 (1985). *Ake v. Oklahoma* involved the defense of an indigent defendant's due process rights when questions about competency were raised. The *Ake* decision held that a defendant's socioeconomic status and ability to afford a psychiatric evaluation have no bearing on his right to an evaluation by a qualified expert and required states to provide the evaluation. Although the case findings specifically related to indigence and socioeconomic class, the *Ake* decision formally applied the protection of due process rights guaranteed under the 14th amendment to anyone whose competency to stand trial was at question in any court within the jurisdiction of the United States (Mossman et al., 2007). This case is of fundamental importance to defendants with a different cultural background.

Specific Federal Court Procedures

***Godinez v. Moran*, 509 U.S. 389 (1993).** In addition to establishing broader due process protections for defendants, case law has also established more specific court procedures. *Godinez v. Moran*, 509 U.S. 389 (1993), addressed issues of competency as it applies to a defendant's decision-making capacity when entering a plea. Under this decision, a defendant's fitness to stand trial would imply competence to waive counsel and plead guilty. The court reasoned that the ability to enter a plea and waive counsel are fundamental decision-making requirements for a defendant in the criminal trial process and hence held to the same standard required under *Dusky* (Mossman et al., 2007). Mossman et al., (2007), also noted that the *Godinez* decision further suggested that the court (via a forensic evaluator) "may have to evaluate at least some of a defendant's decision-making abilities when making judgments about adjudicative competence" (p. S6).

Indiana v. Edwards, 554 U.S. 164 (2008). In 2008, the U.S. Supreme Court further addressed the issue of competency to waive counsel for the purposes of self-representation in *Indiana v. Edwards* (2008). Unlike *Godinez*, the Court held that a higher standard for competence is required to represent oneself above that required by the Dusky Standard.

Panetti v. Quarterman 551 U.S. 930 (2007). The most recent Supreme Court case considering mental competency and court procedure has been *Panetti v. Quarterman* (2007), which involved the execution of defendants. The Court ruled that a death row criminal defendant cannot be executed if he does not understand the reasons for their execution, and that his counsel may raise the question of their competency to be executed in post-trial habeas corpus proceedings.

While *Godinez v. Moran*, *Indiana v. Edwards*, nor *Panneti v. Quarterman* directly explored culture as a potential contributing factor, the cases addressed procedural processes that are of specific importance when considering if or how cultural differences may impact competency to stand trial. The complexities of the justice system could create confusion and barriers to defendants whose experience and understanding of justice, law, and crime were foreign, and therefore might present the defendant as potentially incompetent under the Dusky Standard. Tseng, Matthews, and Elwyn (2004), posed that “we must ask how we might best accommodate cultural issues in order to be fair to people of diverse ethnic and cultural backgrounds but still have an effective legal system” (p. 24). From a culturally orientated perspective, this is a central question when examining procedural case law as it pertains to competency to stand trial.

Washington State Statutes

The landmark decision of *Dusky v United States* has resonated throughout the criminal justice system and served as a template for establishing state laws that address adjudicative competency. After the *Dusky* decision, each state either adopted the Dusky Standard as state law or legislated a similar standard to define competency to stand trial (Bonnie, 1992; Roesch et al., 1999).

In the State of Washington, the Revised Code of Washington (RCW) is the collection of currently enacted laws for the state. Chapter 10, section 77 of the RCW (RCW 10.77) references the statutes derived from the *Dusky* decision. The following are annotated subsections of the RCW 10.77 that were selected as those relevant to the evaluation of a defendant's competency with particular attention to potential impact by a defendant's culture.

RCW 10.77.020 requires that the defendant demonstrate an understanding of the following: (1) the nature of the charges, (2) the statutory offenses included within them, (3) the range of allowable punishments there under, (4) possible defenses to the charges and circumstances in mitigation thereof, and (5) all other facts essential to a broad understanding of the whole matter. Section 10.77.020 speaks to individual differences of defendants, which could include cultural background. To establish the conditions necessary to find a defendant competent, the law requires a forensic evaluator to explore these five conditions with the defendant to determine their capacity to understand and identify any barriers to their understanding.

A defendant's cultural differences can directly impact their understanding of each aspect of the statute. The Washington State Legal System Guide to Forensic Mental Health Services notes, "It is essential to be responsive to ethno-cultural differences in etiological and causal

models of health and disorder, patterns of disorder, standards of normality, and treatment alternatives” (Washington Office of Forensic Mental Health Services, 2016, p. 8–9). Among the differences noted in this section of the guide are standards of normality, which apply to the cultural standards by which the defendant has been immersed. If the standards of normality for a given defendant do not include a compatible understanding of the requirements set forth under RCW 10.77.020, the defendant may present as incompetent to stand trial, or worse, run the risk of being misdiagnosed with a mental illness to explain any differences in thinking and understanding.

RCW 10.77.060 (1)(a) necessitates that if a defendant’s competence is in doubt, “the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate a qualified expert or professional person, who shall be approved by the prosecuting attorney, to evaluate and report upon the mental condition of the defendant.” The court is allowed to commit a defendant to be hospitalized or to a secure mental health facility for no more than fifteen days to complete a full competency to stand trial evaluation. Additionally, this statute provides the defendant with the right to have his own professional evaluator observe the evaluation and be granted access to the evaluation results.

RCW 10.77.060 provides specific protections for defendants. It identifies who can question competency, place constraints on how long someone could be detained to determine competency and requires that the person conducting the evaluation be qualified. The issue of qualification is critical in conducting evaluations of a defendant from a different cultural background. This issue will be discussed later in this chapter, with the Washington State Supreme Court’s decision on two cases that examined what constitutes a qualified expert when a defendant from a different cultural background has been evaluated for competency to stand trial.

RCW 10.77.060 also provides additional opportunities for cultural differences of the defendant to be identified and outlines the symptoms of mental illness that define what constitutes competency to stand trial evaluation and report should contain. These requirements include: (a) A description of the nature of the evaluation; (b) a diagnosis or description of the current mental status of the defendant; (c) if the defendant suffers from a mental disease or defect, or has a developmental disability, an opinion as to competency; and (f) an opinion as to whether the defendant should be evaluated by a designated mental health professional¹.

Washington State Case Law

The Washington State Supreme Court has heard several cases related to issues surrounding competency to stand trial. In this next section, case law generated from the Court's decisions were reviewed to provide a background of how *RCW 10.77* has been interpreted and specifically how those rulings have contributed to defining the requirements for competency evaluations particularly from the lens of cultural competency.

State v. Gwaltney

The first test of the Dusky Standard in Washington State was *State v. Gwaltney*, 77 *Wn.2d* 906 (1970). Terry Gwaltney was found incompetent to stand trial after "the defendant displayed a completely inappropriate grin or half-grin on many occasions" and, because the grin appeared "in situations where the questions and answers were completely without humor, i.e.: his emotions were flatly displayed" (*State v. Gwaltney*, 1970, Para. 9). The State Supreme Court upon hearing this case ruled that the physical inability of a defendant to express his emotions is

¹ Note subsections (d) and (e) were not included as they pertain only to mental state at the time of the crime and not competency to stand trial.

not a test of his competency to stand trial and that the trial court had abused its discretion by finding Gwaltney not competent to stand trial.

The *Gwaltney* decision has direct applicability to cases where the defendant is of a different cultural background. Communication through both body language and facial expression is a fundamental aspect of culture. However, interpretation of body language has been found to not be universal, and has been shown that it has a variety of meaning of non-verbal cues between cultures (Jack, Caldara, & Schyns, 2011).

State v. Israel

State v. Israel, 19 Wn. App. 773, 577 P.2d 631 (1978) cited the Dusky Standard stating that courts are required to perform competency evaluations whenever the defendant's competency to stand trial is in doubt. The Court also affirmed that the defense attorney's opinion of the defendant's competency to stand trial must be considered "with great weight" (*State v. Israel*, 1978). From a cultural perspective, it stands to reason that a defendant's attorney would be in the best position to advocate for the client and bring forth issues such as a cultural misunderstanding of the defendant, making the *Israel* decision a potentially critical one for protecting a multicultural defendant's rights when competency to stand trial is at question.

State v. O'Neal

One year after *State v. Israel*, the Court began to more clearly define what both initiated a competency evaluation and what was required in the evaluation. *State v. O'Neal*, 23 Wn. App. 899, 600 P.2d 570 (1979) ruled that defendants had a Constitutional due process right to have a competency evaluation, when the question of competency was raised. However, the Court also found that there were no specific or strict rules around the types of behaviors that a defendant should exhibit that would require a competency evaluation to be performed. The Court instead

determined that it ultimately falls to the discretion of a trial judge to order an assessment of competency based on observing the defendant's "appearance, demeanor and conduct in Court", as well as the defendant's personal and family history, prior medical and psychiatric records, and any statements made by the defense.

The *O'Neal* decision required that the court consider background information about the defendant when considering competency to stand trial, although culture was not named specifically in the decision, the decision is critical if culture is to be considered as a factor contributing to defendant's presentation before the court as it relates to competency to stand trial.

Seattle v. Gordon

In *Seattle v. Gordon*, 39 Wn. App. 437, 441, 693 P.2d 741 (1985), the Court ruled that any motion by the defense for a competency hearing must be supported by factual evidence that the defendant is potentially incompetent to stand trial and that the Court must inquire into the following areas: the defendant's understanding of the charge and consequences of conviction, the defendant's understanding of the facts that led to him being charged, and the ability of the defendant to aid his attorney to prepare a defense. Perhaps most important in this case was that the Court used the phrase "reason to doubt" in the decision as it related to the defendant's competence (*Seattle v. Gordon*, 1985, p. 441). Doubt in this context implied a non-definitive perspective. The standard by which a defendant's competency is examined and judged could therefore be construed as being flexible and variable depending on the context of the facts in the case, and variables of the defendant, including cultural background.

State v. Gallegos

State v. Gallegos (NR) P.3d, WL 3734920 (Wash. App. Div. 2; 2006) reaffirmed that the procedures of the competency statute (RCW 10.77) are mandatory. While the findings followed

previously determined measures for deciding competency, the Court also suggested for the first time that a defendant's behavior should be contrasted against the behavior of other defendants previously assessed as a means to determine competency to stand trial.

The finding in *State v. Gallegos* is critical to the consideration of culture as a factor in competency to stand trial since behavior and culture mutually influence one another. Albert Bandura (1978) noted that a person's behavior both influences and is influenced by personal factors and the social environment, in what he termed reciprocal determinism. Since behavior is tied to culture in this manner, behavior exhibited by a defendant from a different cultural background may be suggestive of incompetency due to a lack of understanding of American social norms and the court system, and not necessarily indicative of a thought disorder or other mental illness or deficit (Perlin & McClain, 2009).

Sisouvanh and Ortiz-Abrego

The previously discussed United States Supreme Court, and Washington State Appellate Court cases were selected as most salient to the discussion of competency to stand trial with regard to how examiners conduct evaluations. While each of the cases could be argued to show how the application to a defendant's cultural background could impact the evaluation process and determination of competency, it has not been until recently that the courts have begun directly exploring issues of culture as it may relate. A law review search regarding the issue of culture and competency to stand trial revealed that the Washington State Supreme Court's ruling in *Washington v. Sisouvanh* (2012) was the first high court case in the United States to begin to question if and how a defendant's cultural background could be a significant factor in determining competency to stand trial was raised.

State v. Sisouvanh, 175 Wn.2d 607, 624, 290 P.3d 942 (2012). State v. Sisouvanh (2012) was the first significant case to be heard by the Washington State Supreme Court regarding the issue of culture and competency to stand trial. On June 27, 2008 Phiengchai Sisouvanh murdered Araceli Camacho Gomez, who was eight months pregnant at the time of her death. According to the court filing (*State v. Sisouvanh, 2012*) and a newspaper article by Paula Horton (2010), the police report stated that Sisouvanh had contacted emergency services after she murdered Camacho Gomez and removed the fetus from her womb. Sisouvanh then attempted to pass the baby off as her own, claiming that she had given birth. Police “saw Sisouvanh in the back seat repeatedly asking, “Is my baby OK?” She was holding what appeared to be an umbilical cord and was wearing only a shirt” (Horton, 2010). Law enforcement quickly linked the murder of Camacho Gomez to Sisouvanh and placed her under arrest.

Sisouvanh was arraigned, and on October 20, 2009 the trial court ordered Sisouvanh remanded to a State Hospital for a 15-day competency to stand trial evaluation (*State v. Sisouvanh, 2012*). Following the evaluation, a State Hospital psychologist opined that Sisouvanh had been malingering her psychiatric symptoms, and the judge ruled that she was competent to stand trial. After a lengthy trial, Sisouvanh was found guilty of aggravated first-degree murder (*State v. Sisouvanh, 2012*). Sisouvanh appealed her conviction on the basis that the competency evaluation was improperly conducted due to a lack of cultural competency of the evaluator, thereby violating her due process rights (*State v. Sisouvanh, 2012*).

The defense’s argument at appeal was that the assigned forensic psychologist was not an expert as defined by RCW. The defense claimed the evaluator did not have the requisite cultural competence to conduct a competency evaluation with someone with Sisouvanh’s cultural background, and the evaluation itself was not conducted in a culturally competent manner. The

determination of a lack of cultural competency was primarily based on the evaluator having stated that he “judged her to be substantially acculturated to the United States,” that she had lived “a pretty average American life,” and therefore “he could rely on the tests he administered and his interpretation of Sisouvanh’s behavior, without investigating her background any further, and without learning about her Laotian culture” (State v. Sisouvanh, 2012). In response to the opinion of the state psychologist, a number of issues were raised by the defense at appeal in an attempt to illustrate that Sisouvanh’s cultural experiences were important influences in this case.

According to court documentation (State v. Sisouvanh, 2012) Sisouvanh was of lowland Laotian decent and had immigrated with her mother to Minnesota when she was six years old. Prior to her moving to the United States, Sisouvanh “had a horrible childhood,” born into an arranged marriage in a primitive Thai refugee camp to a Lowland Laotian mother who wanted “little to do with her” (State v. Sisouvanh, 2012; Cary, 2010, p. 2).

Sisouvanh reported that she had experienced physical abuse from her mother and was eventually removed from her mother’s care prior to relocating to Washington State (Horton, 2010). While in Washington, Sisouvanh graduated from high school and earned her nursing aid credentials (Horton, 2010; Cary, 2010). The defense’s opening remarks related that as Sisouvanh grew up she created a “fantasy life that reflected the all-American-girl life” (Cary, 2010, p. 2). The defense related events that supported the “fantasy life” argument, stating that Sisouvanh sent out invitations inviting friends to a wedding with a nonexistent groom, and that she started using the groom's last name at work (Cary, 2010). The defense also related that Sisouvanh had told a former boyfriend that she had given birth to his son, which she had not, and had talked in the child's voice on the telephone (Cary, 2010). Court documents showed that the defense claimed that for approximately five years prior to the murder, Sisouvanh had repeatedly shown interest in

other pregnant women, and made numerous claims that she was pregnant herself (State v. Sisouvanh, 2012).

Essential to the appellant argument was that the due process right of determination of competency requires that the expert conducting the evaluation understand the cultural background of the defendant (State v. Sisouvanh, 2012). Failure to take the defendant's culture into account could lead to the utilization of techniques and tools that are inappropriate, not validated for the population, and may not reflect the specific needs presented by the defendant's cultural experience (Fox et al., 2012). The question of a defendant's capacity to understand what is happening in the courtroom has been a long-standing fundamental aspect of due process as stated in *Drope v. Missouri* (1975):

It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial... for our purposes, it suffices to note that the prohibition is fundamental to an adversary system of justice. (Sub. II, Para.1)

While the court retained the ultimate authority to determine which defendants have the capacity to stand trial, court officers have usually lacked the specialized knowledge and experience to conduct an adequate forensic evaluation. Therefore, the court has been reliant upon those it has deemed as experts. Typically, psychologists and psychiatrists are requested to conduct the evaluations and provide a professional opinion as to the capacity of a defendant. Revised Code of Washington 10.77.060(1)(a) directs the court that:

Whenever a defendant has pleaded not guilty by reason of insanity, there is reason to doubt his or her competency, the court on its own motion or on the motion of

any party shall either appoint or request the secretary to designate a qualified expert or professional person, who shall be approved by the prosecuting attorney, to evaluate and report upon the mental condition of the defendant.

Additionally, RCW 10.77.060(1)(b) states:

The court shall serve as authority for the evaluator to be given access to all records held by any mental health, medical, educational, or correctional facility that relate to the present or past mental, emotional, or physical condition of the defendant.

State v. Sisouvanh (2012) suggested that this legislative clause was meant to draw attention to the concept that a defendant's past history is required to understand the context for their mental state at present. Further, the directive of RCW 10.77.060(1)(a) to "gather information" about the defendant's past would "make no sense if the experts involved either consciously decided not to look at the person's cultural experiences, or were not qualified to assess or understand those experiences" (Fox et al., 2012, p. 5).

The Washington State Supreme Court ultimately did not overturn Sisouvanh's conviction, citing that since Sisouvanh had lived the majority of her life in the United States the lack of consideration of Laotian culture in this case was not a reversible error (*State v. Sisouvanh, 2012*). However, the Court did acknowledge that culture was an essential aspect of competency to stand trial evaluations. "There may be times when an otherwise qualified expert fails to reasonably account for the need for cultural competence, and we may, in an appropriate case, conclude that a trial court has abused its discretion by accepting a competency evaluation that did not reasonably account for the defendant's culture. But this is not such a case" (*State v. Sisouvanh, 2012, Para. 38*). Despite the acknowledgement of cultural importance in competency to stand trial evaluations, the Court did not set precedent as to how culture was to be addressed.

Instead, the Court determined that it was the role of the legislature, not the judiciary to determine what constitutes cultural competency with respect to competency to stand trial evaluations (Kraemer, 2012).

State v. Ortiz-Abrego (NP) P.3d, WL 67894-9 (Wash. Ct. App. 2015). Three years after the Washington State Supreme Court adjudicated *State v. Sisouvanh*, the Washington State Appellate Court heard another case that further delved into cultural relevance as a factor in competency to stand trial evaluations. In *State v. Ortiz-Abrego (NP) P.3d, WL 67894-9 (Wash. Ct. App. 2015)*, the court found that the state assigned forensic evaluator failed to address the defendant's Salvadorian cultural background and gave greater weight to the defense expert, who not only spoke Spanish and could conduct the interview in the defendant's native language, but also addressed the defendant in a culturally competent manner by "noting the importance of developing rapport through *personalismo* or small talk" (State v. Ortiz-Abrego, 2015, para. 33).

Although the Court recognized that an interview done directly and without the use of interpreters was preferred, the Court's main concern was the manner in which the evaluation was conducted. As noted in the Court's decision:

(The) doctors made no attempt to evaluate Ortiz-Abrego in a culturally appropriate fashion: Ortiz-Abrego's formal competency evaluation was a "two-hour interrogation." Adopting the "opposite [approach] to the one (the defense expert) would have recommended." Id. This is concerning because in *Sisouvanh*, this court explicitly addressed the need for culturally appropriate competency evaluations. (Para. 33)

The Court's decision clearly showed that in Washington State, competency to stand trial evaluations require some measure of cultural awareness in order to be considered judiciously

fair, thereby upholding the defendant's constitutional rights to due process. The Court made several broad sweeping remarks, but did not specify how culture was to be considered in competency evaluations beyond apparently suggesting that expert consultation should be utilized, and that the evaluation should take place in the defendant's native language whenever possible.

In both *Sisouvanh* and *Ortiz-Abrego*, the Washington State Supreme Court identified defendant culture as a contributing factor when considering mental illness and competency of a defendant to stand trial. However, the Court stopped short of ruling on a standard for cultural consideration as a mandatory addition to the Dusky Standard. The primary reason for this was that per the legal standard in considering scientific evidence (see *Daubert v. Merrell Dow Pharmaceuticals Inc.* (1993), *General Electric Co. v. Joiner* (1997), and *Kumho Tire Co. Ltd. v. Carmichael* (1999), discussed below), the Court lacked adequate information from the field of forensic psychology in general, as well as an established standard of practice for addressing culture in forensic evaluations to make such a ruling. These points were highlighted in the Court's review of the Amici Curiae raised in appeal of the *Sisouvanh* trial court's findings.

The Amici Curiae filed on behalf of the defendant identified, and the Washington State Supreme Court concurred, that there lies a fundamental need for an expert conducting a competency to stand trial evaluation to be culturally competent (State v. Sisouvanh, 2012). It is not sufficient for a forensic evaluator to merely acknowledge the importance of culture as factor if the evaluation itself failed to sufficiently account for cultural differences. Therefore, the Amici argued that a trial court should not accept any evaluation from an evaluator that did not meet a minimum standard of cultural competency and/or if the evaluation did not meet a sufficient level of adequacy in addressing the defendant's culture.

While agreement existed on the importance of cultural competency for both the evaluator and evaluation, the question of what would be considered adequate to address culture remained open. The Court stated that the degree of adequacy was debatable and dependent on a case-by-case basis, and furthermore, no precedent existed for the establishment of a court rule regarding cultural competency. In substantiation of the problem of a court rule, the Court noted in its response to the Amici (2012), “practical difficulties in implementing a broad rule by Court decision” (p. 8). This included the need to define culture, determine of how much investigation and research into particular cultures is necessary, identify which relevant subcultures, if any, merit special consideration, and identify parameters for the term competent (State v. Sisouvanh, 2012). The court also pointed out that there is “no consensus regarding a standard protocol for conducting competency evaluations”, and “cultural competency in forensic evaluations is a new field, and various clinicians and scholars may hold different viewpoints.” (State v. Sisouvanh, 2012, p. 32).

Ethical Considerations

Whether in a clinical setting, conducting research, or providing adjudicative guidance in a forensic setting, the APA Ethical Guidelines (2017) and the APA Multicultural Guidelines (2017) have specifically warned against utilizing a Eurocentric perspective in working with multicultural individuals. Eurocentric bias has been taken for granted as “truth” throughout the history of psychology and has contributed to the trivialization of issues regarded by the non-dominant society as significant (Hall & Livingston, 2003). “For psychology to remain relevant as a profession we must ensure we are able to effectively meet the needs of the many different individuals who will need mental health treatment services” (Barnett & Bivings, 2002, p. 8).

Perhaps foremost in the APA ethical guidelines with regard to forensic evaluations and multicultural populations is the stipulation that evaluators consider the boundary of their expertise, make an appropriate referral if indicated, or gain the necessary training, experiences, consultation, or supervision (APA Ethical Guidelines, 2017, section 2.01). Additionally, the APA ethics code requires that psychologists use measures that are reliable and valid with members of the population tested and take personal, linguistic, and cultural differences into account in assessment interpretation (APA Ethical Guidelines, 2017 section 9.02). Anytime a forensic evaluator conducts an assessment, the evaluator must understand the limitations of the instruments and techniques used when applied to a specific issue or defendant (Weiss and Rosenfeld, 2012). Unfortunately, few options exist for individualized test selection and many of the tools used during competency evaluations are applied with their known inherent culture bound bias, including most standardized IQ testing, malingering assessments, risk assessments, and forensic interview tools; even the Diagnostic Statistical Manual's definitions used in diagnosis are known to have inherent cultural bias (Steinberg, Dornbusch, & Brown, 1992; Weiss & Rosenfeld, 2012). By having to rely on potentially inappropriate cultural bound assessment instruments and diagnostic methods, forensic examiners can arrive at potentially flawed interpretations of defendants' behavior and cognitive process; both of which could directly impact opinions on competency to stand trial if special care is not taken.

Psychological assessment is almost always conducted for the purpose of answering a relevant clinical question. Relevant questions posed in a forensic evaluation are usually specific and driven by legal imperative rather than a clinical reason. As such, the focus of forensic assessment is often narrower than most clinical assessments (Melton et al., 2007). This can create ethical quandaries for the examiner, such as when the psycholegal question posed requires

the use of an assessment instrument that was not be designed or normed for the population of the defendant (Tseng et al., 2004).

Although a number of ethical guidelines have been designed to consider issues of ethical relevance and are particularly relevant to the practice of forensic psychology, issues such as a lack of an appropriate testing instrument for a given population, can create conflict between interpretation of guidelines and what the law demands. This section will present and provide with a synopsis of ethical guidelines relevant to the practice of forensic psychology. An understanding of these guidelines is important when considering the findings of this study and in the development of recommendations for practice and further research.

American Psychological Association Multicultural Guidelines

The American Psychological Association (APA) acknowledged the clinical necessity of assessing individuals within the context of their ethnicity and culture through the development of multicultural guidelines. “The *Multicultural Guidelines* were written to address the different needs for particular individuals and groups historically marginalized or disenfranchised within and by psychology based on their ethnic/racial heritage and social group identity or membership” (APA, 2008, p. 4). The guidelines follow and cite recommendations from such researcher/practitioners as Sue and Sue (2002), who stressed the awareness of both patient and clinician beliefs, realization of background knowledge about the client’s worldview, and the development of culturally competent skills.

Originally published by the APA in 2002 and titled the Guidelines on Multicultural Education, Training, Research, Practice, and Organizational Change for Psychologists there has been significant growth in research and theory regarding multicultural contexts (APA, 2017).

The current Multicultural Guidelines, which were released in 2017, sought to re-conceptualized diversity and multicultural practice within professional psychology with a focus on how knowledge and understanding of identity develops (APA, 2017). The revision to the 2008 release not only revised the guidelines, but expanded them from six to ten so as to “incorporate developmental and contextual antecedents of identity and how they can be acknowledged, addressed, and embraced to engender more effective models of professional engagement” (APA, 2017, p. 6). The Multicultural Guidelines now draw on a layered ecological model that has been influenced by the processes of bidirectional power and privilege, tensions between systems and the individual, and fluidity of people’s interactions and relationships that are impacted by multivariate contexts (APA, 2017).

The Multicultural Guidelines were devised to reach broadly across psychology with respect to clinical work, educational settings, training, and research. While not written specifically to address working within a forensic context, they remain important to the specialty as they may help guide the forensic evaluator with conceptualizing professional interactions and assessment with others from diverse populations. While each of the ten guidelines are relevant to addressing the complexities that arise cross culturally, guideline number five appears to speak most directly to the work done in a forensic evaluation and has been replicated here for the reader:

Psychologists aspire to recognize and understand historical and contemporary experiences with power, privilege, and oppression. As such, they seek to address institutional barriers and related inequities, disproportionalities, and disparities of law enforcement, administration of criminal justice, educational, mental health, and other

systems as they seek to promote justice, human rights, and access to quality and equitable mental and behavioral health services. (APA, 2017)

Matters of inequality have long been imbedded within the criminal justice system, which is where this guideline takes on particular importance to the work of forensic psychologists. The conclusions that are reached through forensic evaluations can have a strong influence on legal outcomes (Melton et al., 2007), and there is an imperative that that they be reached ethically. Guideline five provides that imperative by specifically requesting that psychologists directly address systemic barriers to equality and issues of power and oppression. In essence calling on the evaluator to challenge systemic inequality.

Although the taskforce noted that ethical guidelines are recommendations and “are intended to be aspirational rather than prescriptive... and not intended to be interpreted as standards or requirements” (APA, 2008, p. 3), these guidelines are a measure of where psychology is with regard to multicultural understanding and inclusion. While forensic psychology has the unique mandate to apply psychological practice to questions of law, cultural demographics and societal attitudes continue to shift in the direction of greater diversity and inclusion. While not rules, these guidelines represent a foundation for forensic practitioners to address inequality within the criminal justice system where they can and help develop best practices more aligned with societal norms.

American Psychological Association Specialty Guidelines for Forensic Psychology

For the past 50 years, the practice of forensic psychology has expanded considerably while presenting a unique set of challenges that differs from traditional clinical practice (American Psychological Association, 2013). To address the growth and challenges presented by forensics, APA Division 41: The American Psychology-Law Society was established, and in

1991 the Specialty Guidelines for Forensic Psychology were developed and first published by the division. The guidelines were revised in 2013 to continue to address the increasing complexity of the field and are still the only APA-approved guidelines that address a complete specialty practice area (American Psychological Association, 2013).

The Specialty Guidelines for Forensic Psychology consists of 11 topic areas with individual guidelines under each topic. The topics include: (1) Responsibilities, (2) Competence, (3) Diligence, (4) Relationships, (5) Fees, (6) Informed Consent, Notification, and Assent, (7) Conflicts in Practice, (8) Privacy, Confidentiality, and Privilege, (9) Methods and Procedures, (10) Assessment, and (11) Professional and Other Public Communications. Within the guidelines there are two that directly address cross-cultural issues. Both guidelines are found under topic area (2) Competence, and include guidelines, 2.07 and 2.08.

Guideline 2.07: Considering the Impact of Personal Beliefs and Experience, recognizes that forensic practitioners are susceptible to biased and prejudiced beliefs just as everyone else is. The guideline advises practitioners to recognize how their own culture impacts their attitudes, values, and beliefs, and how their opinions and biases could impact their competency and impartiality with some evaluatees. This places the responsibility on practitioners to limit the effect their biases may have, or to limit or decline participation in the case.

Guideline 2.08: Appreciation of Individual and Group Differences, advises that forensic examiners cannot take a colorblind approach to an evaluation. “Factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, socioeconomic status, or other relevant individual and cultural differences affects implementation or use of their services or research” (American Psychological Association, 2013, p. 10). Furthermore, guideline 2.08 stresses the importance for forensic

examiners to understand how individual and group factors affect and are related to a person's contact and involvement with the legal system. The guideline calls for forensic practitioners to not engage in unfair discrimination, and if discrimination is identified, the guideline places responsibility on the practitioner "to take steps to correct or limit the effects of such factors on their work, decline participation in the matter, or limit their participation in a manner that is consistent with professional obligations" (American Psychological Association, 2013, p.10).

American Academy of Psychiatry and the Law Ethics Guidelines for the Practice of Forensic Psychiatry

Analogous to the ethical guidelines in place for forensic psychologists, the American Academy of Psychiatry and the Law (AAPL) Practice Guideline for the Forensic Assessment (2015) has also played an important role in helping determine what is accepted practice within the context of assessing and reporting on a defendant's competency to stand trial. The AAPL guidelines helped to address the lack of accepted best practice in forensic psychiatry that Stone (1984) described as a "moral minefield" (p. 209). Furthermore, Austin, Goble, and Kelecevic (2009) pointed out that the complexities of ethics in the field have only increased since Stone's comment, as ever-increasing competing obligations of the justice and healthcare systems have raised questions about the "very viability of an ethical framework for guiding practice" (p. 835).

The AAPL guidelines have sought to address a wide array of the ethical issues that have arisen as the field has grown more complex. Of the more prominent concerns, and the one that is of chief interest in this study, is the call for forensic practitioners to engage in a culturally competent manner when conducting competency to stand trial evaluations. The guidelines specifically identified several areas including interviewing; acceptance of cultural identity; clinician cultural knowledge, skills and attributes; communication styles;

transference/countertransference; language use in testing; and examination context (Mossman et al., 2007). The AAPL guidelines also acknowledged that the majority of forensic mental health practitioners share an identity with the dominant culture's view that criminal proceedings are adequately fair, meaning that those accused "will get fair treatment and a reasonable chance to defend themselves, and that the dignity and fairness of criminal proceedings are vindicated when an accused person is a capable adversary of the prosecution" (Mossman et al., p. S29). By taking this acknowledgement into account, the guidelines highlighted that culture needs to be considered in a multifaceted manner. Not only do demographics, language, and experience of the defendant need to be accounted for, but also that a forensic practitioner's culturally bound beliefs and experiences are also likely to impact the outcome of the evaluation.

Multiculturalism and Clinical Psychology

In 1851 Jewish German philosophers Moritz Lazarus and Heymann Steinthal coined the term *Völkerpsychologie* (which roughly translated as ethnic or folk psychology) in their article *Ueber den Begriff und die Möglichkeit einer Völkerpsychologie als Wissenschaft*, which translates as *On the Concept and the Possibility of Völkerpsychologie as a Science* (Kalmar, 1987). Despite the presence of the word *psychologie* in the term, Lazarus and Steinthal's philosophy of *Völkerpsychologie* was more anthropological in nature, and possibly influenced Boas' introduction of cultural relativism that has been heralded as the debunker of the misconception that all cultures fall along an evolutionary stage continuum. *Völkerpsychologie* proposed that ethnological studies need to consider systems and mechanisms of "the ever developing activity, of opinions, concepts, understandings, and ideas" of the *Volksgeist* of the society, including: "language, mythology, religion, cult, oral literature, writing, art forms, customs, written law, labor and occupations, and home and family life" (Kalmar, 1987, p. 676). These underlying

concepts of the philosophy of *Völkerpsychologie* profoundly influenced Wilhelm Wundt and were adapted as the foundation of his salient 10-volume *Völkerpsychologie. Eine Untersuchung der Entwicklungsgesetze von Sprache, Mythos und Sitte*, or *Cultural Psychology. An Investigation into Developmental Laws of Language, Myth, and Conduct* (1900–1920), and would ultimately lead to the formation of the field of cultural psychology.

Defining Culture

Central to the importance of understanding how culture works as a critical factor in psychological functioning is in identifying what culture is. The word culture has come to have many meanings and as such, a precise definition has been poorly agreed on; Kroeber and Kluckhohn (2017) listed more than 150 definitions for the term. Anthropologist E.B. Tylor (1871) offered one of the earliest definitions stating that culture is "that complex whole which includes knowledge, belief, art, morals, law, custom and any other capabilities and habits acquired by man as a member of society" (p. 1). Li and Karakowsky (2001) expanded on Tylor's definition suggesting that culture is the totality of learned behavior of a group of people, considered to be the tradition, and diffused from generation to generation.

Anthropologist Victor Barnouw (1973) stated, "a culture is the way of life of a group of people, the configuration of all of the more or less stereotyped patterns of learned behavior which are handed down from one generation to the next through the means of language and imitation" (p. 6). By using Barnouw's definition when considering an individual's psychological makeup through their cultural context, culture appears to impact the person in two important ways. First, culture could refer to any information that has been acquired from other members of the individual's shared culture through social learning, and therefore capable of affecting an individual's behavior (Richardson & Boyd, 2006). And second, culture refers to groups of people

within a shared context. Therefore, a person's cultural context includes similar institutions, practices, and shared communication processes (Heine, 2010). The continuous exposure of an individual throughout the lifespan to shared cultural contexts shapes them psychologically through their relationships with the other members of their culture.

It is important to consider that culture is not stagnant, but instead is a driving factor in the evolution of the human species. Alexander Luria (1928) stated:

In the complicated interrelations with his surroundings his organization is being differentiated and refined; his hand and brain assume definite shapes, a series of complicated methods of conduct are being evolved, with the aid of which man adapts himself more perfectly to the surrounding world. No development... in the conditions of modern civilized society can be reduced merely to the development of natural inborn processes and the morphological changes conditioned by the same; it includes, moreover social change. (p. 494)

Luria referred to the evolving nature of culture, in that it has continuously played a critical role in understanding psychological adaptation to environmental changes. Heinrich and McElreath (2003) concluded that cultural evolution accelerates and expands communication between members of the cultural group, allowing for variety in collective ideas that continuously alter the cultural makeup. Cultural evolution allows for dynamic and complex realities of being human with potentially infinite wide-ranging experiences from one culture to another, and even one generation to another. This is an important concept as it impacts the way in which individuals exist and how others who do not share the same cultural context might perceive them.

Culture could therefore be thought of as the values, meaning, and behaviors that are transmitted by a dominant group. The National Institutes of Mental Health (NIMH) Culture and

Diagnostic Group defined culture as, “Meanings, values and behavioral norms that are learned and transmitted in the dominant society and within its social groups. Culture powerfully influences cognition, feelings and self-concept as well as the diagnostic process and treatment decisions” (Mezzich, Caracci, Fabrega, & Kirmayer, 2009, p. 387). The NIMH definition has specific significance when considering culture within a clinical psychology context, since various disorders have been shown to have differing prevalence and wide variation in the expression of mental illness among diverse cultural groups (Burnam, Hough, Karno, Escobar, & Cynthia, 1987; Kohrt et al., 2014; Rasmussen, Keatley, & Joscelyne, 2014).

Culture and Psychological Functioning

By the 1980’s psychologists began articulating how cultural experiences were principal and inseparable to an individual’s psychological functioning (Heine, 2010). Behavior, cognition, worldview, personality, development, relationships, and even psychopathology have all been described as being rooted within a cultural context (Heine & Ruby, 2010). Heine (2010) stated, “Human activity is inextricably wrapped up in cultural meanings; on no occasion do we cast aside our cultural dressings to reveal the naked universal human mind.” (p. 1423) Culture in all ways defines the rules that provide a contextual basis for our lives.

Perhaps the largest difficulty with defining culture lies within the often-misconstrued use of culture with the similar and related terms of race, and ethnicity (Carpenter-Song, Nordquest, & Longhofer, 2007; Weiss & Rosenfeld, 2012). While all of these terms are used to categorize individuals, they have different meanings. Racial categories are commonly used to refer to a person’s physical characteristics, “usually with little regard for the tremendous variation these broad labels encompass”, while the term ethnicity includes commonalities such as values, customs, and traditions of a group of people (Weiss & Rosenfeld, 2012, p. 234). Culture, on the

other hand is much broader and encompasses ethnicity, referring to the behavioral and ideological norms used to identify a group of people (Alarcón, 2009).

The majority of clients or research participants have most frequently been classified by the terms Black, Hispanic, Asian, American Indian, or White, and while convenient labels for identification, “important, but undefined, distinctions are missed when terms are interchanged.” (Hicks, 2004, p. 22) To highlight this point, Hicks provided an example, which demonstrated that using the narrow label of Black to categorize anyone with African heritage could be far too limiting and promote bias drawn from conclusions that can or cannot account for the experiences of someone from the West Indies, for instance. Considering this example and a myriad of similar ones, one can see how cultural identity can be misconstrued easily if too narrow a label such as a race or ethnicity has been applied to clients without considering the aggregate of their culture.

Clinicians in clinical practice therefore need to look beyond a client’s race and ethnicity to gain further knowledge of the client’s particular cultural identity. A cultural consultation can be used when appropriate so as to avoid bias and misdiagnosis (Lu, Lim, & Mezzich, 1995; Sue & Sue, 2002). The use of cultural consultation has been urged in clinical practice when the clinician and client come from similar cultural and/or ethnic backgrounds to further reduce misassumptions of acculturation and ensure mutual understanding (Pecora et al., 2012; Comas-Diaz & Jacobsen, 1991; Cross, Bazron, Dennis, and Isaacs, 1989, as cited in Anderson et al., 2003). Lu, Lim, and Mezzich (1995) have encouraged clinicians to be aware of their own cultural identity, as well as their own attitudes and beliefs toward ethnic minorities. To achieve this, clinicians need additional skill building as traditional methods of interviewing and psychological testing often can be less than adequate or appropriate (Hays, 2008; Roberts & Gallardo, 2009; Dana, 2008; Haynes, Richard, & Kubany, 2005).

The recognition and consideration of culture has been identified as essential to client conceptualization, and has been incorporated into the clinical interview, case formulation, diagnosis, and treatment of all clients (Hays, 2008; Sue & Sue, 2002; Lu, Lim, & Mezzich, 1995). With the acknowledgement of the importance of recognizing the cultural experience in clinical practice, the necessity for clinicians to be culturally competent became an area of pressing need. Cultural competency has been defined as “a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals, and enables that system, agency, or those professionals to work effectively in cross-cultural situations (Cross, et al., 1989, p. iv). While this definition has largely been agreed on and is often referenced in the creation of ethical guidelines, journal articles, and in diversity training for psychologists, an important complication in accurately and effectively implementing clinical treatment and assessment in a culturally competent manner has been in how to consider cultural diversity.

Danger of Pathologizing Culture

In an attempt to consider cultural diversity as a factor in mental illness presentation, diagnosis, and treatment, the field of psychology developed cultural paradigms that effectively pathologized and marginalized minority groups (Bergkamp, 2010; Sue, 1998; Sue, Arredondo, & McDavis, 1992). Although unintended to pathologize or marginalize, many of the paradigms inadvertently did just that. Sue, Arredondo, and McDavis (1992) notably established a tripartite conceptualization of multicultural counseling competence that involved counselor attitudes/beliefs, knowledge, and skills in working with culturally diverse clients. However, this competence-based approach received criticism for not addressing the perceptions of the client, and consequently negatively impacted the therapeutic relationship (Constatine et al., 2002).

Perhaps key to solidifying the therapeutic relationship with multicultural clients involves the cultural identity of the psychologist. In 2016, the American Psychological Association released a survey detailing cultural diversity among psychologists. The study revealed that only 16.4% of psychologists identified as a racial or cultural minority (Lin, Stamm, & Christidis, 2018). From his dissertation on multicultural competency training, Bergkamp (2010) drew attention to Croom (2000) who suggested “psychologists tend to perceive others through the lens of their own social position, operate within their own culture (dominated by White, heterosexual, and able-bodied privilege), and conceptualize others’ identities and behaviors based on dichotomous perception” (Bergkamp, 2010, p. 2). Bergkamp identified that these tendencies “affect both the psychology of those with and without power and privilege in our society” (Bergkamp, p. 3). This is a critical theme that impacts much of the next section’s discussion on how multiculturalism in forensic psychology has been impacted by themes of power and privilege.

Multiculturalism and Forensic Psychology

Although a long-standing and well-established consensus in clinical psychology has been that a client’s culture is of fundamental and primary relevance in assessment and treatment, the same standards has not been found to the same extent within the forensic psychology literature (Carter & Forsyth, 2007). While the field of forensic psychology has grown significantly in its number of practitioners (Otto & Heilbrun, 2002), a dearth of resources exists to assist them in providing culturally competent services to defendants (Carter & Forsyth, 2007). Furthermore, Carter and Forsyth (2007) found that despite critique by scholars in the field, no analysis other than their own had been done with regard to the treatment of culture in the published forensic psychology research literature.

A partial explanation for the lack of cultural consideration in the field of forensic psychology can be found within the constructs that surround forensic evaluations. Forensic evaluations, by definition, are directed at the answering of a question of psycholegal relevance (Melton et al., 2007). Psycholegal questions, in turn, are generally framed within the precedents decided in case law and as established through statutory requirement (Cunningham, 2006). As such, forensic evaluations have been inhibited by the constraints of the psycholegal question. This has left little space for consideration of factors deemed to be less relevant by a court, which until recently with the expansion of the law has included consideration of a defendant's culture.

Decades of research has identified and explored discrepancies in the way that defendant populations within the criminal justice system have been treated with regard to mental illness, including multiple studies focused on competency to stand trial. Criminology studies of defendants found to be incompetent have indicated that they tend to be socially marginalized and that many have extensive histories of prior involvement with both the legal and mental health systems prior to being found incompetent (Melton et al., 2007). Some of these studies referred to individual mental health history (Nicholson & Kugler, 1991), while others discussed gender roles (Riley, 1998), race and ethnicity (Alexander, 2010), or social class (Surface, 2007). While many of the studies have addressed topics adjacent to or related to those involving culture, the literature has remained devoid of issues that strictly involve cultural differences (Carter & Forsyth, 2007). Thus, the result is a dearth of literature to help guide forensic examiners address the exponentially growing need of assessment, evaluation, and treatment of multicultural defendants.

While it is through culture that humans interpret the world, the criminal justice process has lacked a requirement to determine how cultural factors influence a criminal defendant's

behavior (Boehnlein, Schaefer, & Bloom, 2005). Boehnlein, Schaefer, and Bloom (2005), were among the first psychologists to recognize the importance of accounting for cultural factors in forensic psychology. They stated, “culture greatly influences whether a certain set of beliefs, behaviors, or symptoms are considered pathological or merely lie along a spectrum of normality” (Boehnlein et al., 2005, p. 335). How a defendant interacts with constructed social systems such as the criminal justice system or psychiatric health system, is largely guided by their culture (Boehnlein et al., 2005), and if not interpreted correctly can lead to misunderstanding, misdiagnosis, and ultimately a miscarriage of justice (Melton, 2007).

Just prior to Boehnlein et al.’s review of the impact of culture on competency for sentencing of defendants, Rogers, Jackson, Sewell, Tillbrook and Martin (2003) looked at competency to stand trial in general. The researchers conducted a historical analysis that indicated that research conducted over forty years had not answered the fundamental question of how the Dusky Standard should be conceptualized as it applies to the process of competency to stand trial assessment. The researchers concluded that it was apparent that the field of forensic psychology needed to continue its work toward developing and implementing a better understanding of the psycholegal dimensions of competency assessments and in standardization of the evaluation process (Rogers et al., 2003). With this general lack of standardization within the field toward competency to stand trial evaluations, the researchers’ conclusions become particularly troublesome when trying to address a best practice with regard to the consideration of how multicultural defendants interact with and understand the criminal justice system.

Returning to the example of *peine forte et dure* used at the beginning of this chapter, the majority of Americans would not only consider the use of a torture to be abhorrent, but it likely would also feel foreign to our majority sense of justice. So too may some American justice

system practices appear to be alien and confusing to defendants who have had different cultural experiences with language, beliefs, behavioral norms and customs (Tseng, Matthews, & Elwyn, 2004). For some multicultural defendants, their understanding of crimes, laws, trials, or even justice, if such a concept even existed in their culture, may be very different from the meanings constructed by the American criminal justice system.

Tsytarev and Landes (2008) noted that very little research had been done in the field of forensic psychology to address issues facing multicultural defendants and looked specifically at how this issue has likely impacted outcomes in competency to stand trial evaluations. Since the outcome of a competency evaluation can have a life altering impact on a defendant, understanding the way in which the dimension of culture effects these outcomes is of critical necessity. In order to meet the standards of competency, a defendant is expected to meet an extensive and complex list of abilities (Tsytarev & Landes, 2008). Understanding how these abilities are impaired for an individual defendant as defined by the legal standard requires more than just an exploration of possible psychopathology. Tsytarev and Landes stated that how a defendant's personality, cognitive capacity, emotional stability, as well as what socio-cultural factors may also be present, all impact the evaluator's understanding of impairment.

One critical factor into the understanding of impairment to adjudicative competency that has perhaps received the most attention within the literature and in the courtroom, has been in regard to the evaluation and assessment instruments that psychologist have used in their evaluations. The process of assessing clients from minority populations has been identified as fraught with unfairness and bias in the manner in which the assessment tools have been devised, used, and interpreted (Linn et al., 1991; Hambleton & Murphy, 1992; Sue & Zane, 1987). Although psychologists have found themselves facing questions of accountability about their

assessment practices for nearly 100 years (Sue, 1996), this issue has become amplified with increased cultural, racial, and ethnic diversity within the United States population, with the United States Bureau of Census (2012) predicting that by 2025 approximately half of Americans will be people of color.

As ethnic, cultural, and racial diversity within the United States continues to increase, important questions have been raised regarding the scientific soundness of many assessment tools when they have been applied to clients from demographic groups different from those of the normed population (Weiss & Rosenfeld, 2012). Studies of the application of many mainstream assessment techniques, including the Personality Assessment Inventory (PAI), Millon Clinical Multiaxial Inventory, third edition (MCMI-III), Rorschach, Hare Psychopathy Checklist, among many others, have been identified as lacking, and “it is unclear whether these instruments can appropriately be used with American minorities and non-Americans” (Wood et al., 2002, p. 522). Important to the appropriateness of use of an assessment tool with an evaluatee not from the normed population is the consideration of the degree of enculturation and acculturation of the evaluatee.

Enculturation is the conscious and unconscious process by which people acquire values and norms appropriate and necessary to their culture of origin. (Grusec and Hastings, 2007). Whereas, acculturation refers to the process in which a person of one culture adopts the culture of another, usually a dominant culture, with a result of blending of the aspects of both cultures to varying degrees (Ward, 2008). Both enculturation and acculturation have become more and more a consideration with the use clinical assessment with multicultural populations. Acculturation clinical research on assessment with multicultural populations has shown a rise in the publication of acculturation scales (Perlin & McClain, 2009). In clinical practice, the use of acculturation

scales has been found to be helpful in aiding clinical practitioners in selecting, using, and interpreting appropriate assessment measures, but it is unclear how these scales translate to forensic populations, where historically very little attention has been paid to cultural appropriateness of forensic specific assessments (Perlin & McClain, 2009; Weiss & Rosenfeld, 2012).

Unlike clinical practice, which places a concern regarding cultural appropriateness as a significant factor for the use of an assessment instrument, accountability for the use of clinical assessments in forensic settings has focused much more around the scientific soundness of the assessment instrument (Melton, 2007; Wood et al., 2002; Bersoff, 1984). This is in large part due to the legal standard applied to use of scientific evidence in courts. Use of assessment tools in forensics have been evaluated for scientific soundness using specific criteria for the admission of scientific evidence into court as set forth in three landmark federal court cases, *Daubert v. Merrell Dow Pharmaceuticals Inc.* (1993), *General Electric Co. v. Joiner* (1997), and *Kumho Tire Co. Ltd. v. Carmichael* (1999). Collectively, these decisions have been referred to as Daubert criteria, and ask six specific questions about the scientific evidence being presented:

- (a) Is the theory or technique that forms the basis of the evidence testable? (b) Has it in fact been tested? (c) Is it generally accepted by the relevant community of scientists? (d) Has it been subjected to peer review? (e) Does it have a known error rate? (f) Are there established standards for its application? (Wood et al., 2002, p. 523)

While many clinical assessment tools have been accepted into courts as valid measures for use in a forensic capacity as delineated using the Daubert criteria, the general acceptance of an assessment tool or technique as a valid measure using this benchmark has, until recently, failed to take into consideration appropriate applicability to the specific cultural makeup of the

individual for which the measure has been used (Wood et al., 2002). In fact, “few psychological assessment techniques used in forensic settings have received any empirical support when applied to non-English speaking individuals or those from non-majority ethnic and cultural backgrounds.” (Weiss & Rosenfeld, 2012, p. 234) Instead, “forensic assessment literature typically addresses racial and ethnic differences on psychological testing, with little emphasis on issues of culture” (Weiss and Rosenfeld, 2012, p. 235). While race and ethnicity are critical to determining appropriate testing, they are just two variables that can influence a person’s cultural expression, and since other factors of culture have not typically been considered, there lacks a clear understanding within the literature about how a person’s culture impacts forensic assessment.

In addition to issues of cultural appropriateness of assessment instruments, the forensic examiner and defendant have also been identified as important factors in the consideration of culture in competency evaluations. Tsytsarev and Landes (2008) identified that unconscious cultural bias of both the examiner and defendant can subjectively impact an opinion about competency to stand trial. As national demographics continuing to shift in a multicultural direction with a rapid pace, and psychologist tend to continue to be representative of the dominant white culture (APA-CWS, 2015), white clinicians have found themselves evaluating more and more individuals with different ethnic, cultural, and racial backgrounds from themselves (Kois & Chauhan, 2016). In forensic psychology this trend is more pronounced and potentially more problematic due to the inherent inequality and bias within the criminal justice system (Alexander, 2010).

Criminologists have frequently pointed to demographic changes in the United States as a large part of the explanation for the increased diversity of defendants who are incarcerated and

awaiting trial (Carson, 2014; Massoglia, Firebaugh, & Warner, 2013; Asumah, & Johnston-Anumonwo, 2002). United States Department of Justice statistics reported a rise in ethnic and racial minorities since 1970, and specifically noted that Caucasians, who make up 77.4% of the U.S. population (United States Bureau of Census, 2012), represented only 30% of incarcerated inmates in 2014 (Carson, 2014). Disproportionate increases in immigrant populations have also been recorded in pre-trial populations (Carson, 2014), from which there has likely been a corresponding increase in forensic populations awaiting pretrial competency to stand trial evaluations. The exact number and demographic makeup of pretrial competency is unknown, as this type of data is not retained, however it is clear from the census and justice data that demographic changes alone have not explained the phenomenon of disproportionality of people of color and from cultures outside of the United States having more exposure to all levels of the criminal justice system, including forensic psychological evaluation (Kois & Chauhan, 2016).

Even though the diversity of defendants evaluated in forensic settings continues to increase, concerns around bias and prejudice in evaluations has received very little research or attention in the literature (Weiss, & Rosenfeld, 2012, p. 234). However, two important studies relevant to this discussion have recently emerged. The first study, authored by Shepherd and Lewis-Fernandez in 2016, examined the role of culture in risk assessment following a Canadian Federal Court ruling that impugned the appropriateness of five common risk assessment instruments for use with First Nations People. The second study, and the more salient of the two as related to this research, surveyed 100 forensic examiners from around the United States and asked them to self-report on specific issues of cultural competency and diversity in their forensic practice (Kois & Chauhan, 2016).

Shepherd and Lewis-Fernandez (2016)

The decision in *Evert v. Canada*, which denounced the use of a commonly used group of risk instruments with Canadian aboriginal offenders as unreliable, was described as both unforeseen by the field of forensic psychology and “served as a reminder that insufficient academic attention has been afforded to the needs and experiences of minority clients” (Shepherd & Lewis-Fernandez, 2016, p. 433). The decision by the Canadian Court was important for two main reasons. First the court stated that the culture of a defendant is a critical factor when considering the manifestation of risk. This is not to say that the Court suggested that some cultures present more of a risk than others, rather “culture determines behavioral norms and expectations, acceptable responses to a threat, emotional presentation, modes of communication, goals, and motivations, as well as explanations or remedies for illness, dysfunction, and delinquency (Shepherd & Lewis Fernandez, 2016, p. 434).

Second, the Court drew attention to the need for science to support the use of assessment instruments and rejected the current standards for use of the instruments with untested populations. Psychological assessments, and specifically risk assessments, tend to be crafted with one cultural group in mind, then may or may not be tested for validity and reliability with other cultural groups (Shepherd & Lewis Fernandez, 2016). Yet these instruments are still used with individuals where the prediction estimates are likely unreliable, using the premise “close enough is good enough” (Shepherd & Lewis Fernandez, 2016, p. 434).

Shepherd and Lewis-Fernandez drew further attention to the continued discrimination and rights violations faced by marginalized populations in criminal justice and mental health systems, as well as to the lack of research in this area. Although the decision was from a Canadian Federal Court, American and Canadian criminal courts have often reflected similar

judicial decisions as a result of language, history, economy, common law, and philosophy (Bowal, 2002). The decision in *Evert v. Canada* is similar to the Washington State decision in *Sisouvanh* and both cases are likely indicators of the Court's progressive attitude toward the use of scientific evidence that considers cultural relevance and fairness.

Kois and Chuahan (2016)

Kois and Chuahan found “marked demographic differences between evaluators and their evaluatees” (p. 7). They identified the majority of evaluators to be white, female, native English speakers, and born in the United States; while the majority of evaluatees, as reported by the examiners, were typically found to be male and with higher percentages from diverse racial, ethnic, and native backgrounds, and with different linguistic practices. After determining that the demographic profiles of the evaluators and evaluatees mirrored practitioner and correctional demographic studies, the researchers then examined responses to questions around five domains they identified as important when considering general cultural competence within forensic guidelines, including: communication, clinical interview and collateral information, assessment, case formulation, and bounds of competence.

Overall Kois and Chuahan found that most evaluators reported that they usually or always attended to communication practices including differences in styles, linguistic backgrounds, level of comfort in communication, and use of interpreters (p. 5). Approximately half the time, the evaluators reported attending to issues of cultural difference during the clinical interview and receiving collateral information, and they usually or always considered level of acculturation during assessment and endorsed the practice of identifying strengths and weakness of using certain assessment measures, although they were reportedly to less likely actually do it (p. 6). With regard to case formulation, the evaluators in the study reported that they usually

engaged in culturally competent case formulation including seeking consultation, consideration of evaluatees' perceptions, and identifying and overcoming their own biases (p. 6). However, when considering bounds of competence, evaluators endorsed recognizing and/or seeking ways to increasing bounds of competence only about half the time (p. 6).

Kois and Chuahan stated, "the lack of demographic variability among evaluators as opposed to the diversity in evaluatee demographics suggests that opportunities are ripe for cross-cultural misconceptions in forensic evaluation contexts" (p. 7). The authors were encouraged that about 80% of evaluators attended diversity training while in the workplace, even if the quality of the training was only rated from fair to good (p. 7). However, "while the majority of evaluators completed some form of cultural competent training, a number of evaluators did not report consistent engagement in culturally competent practices" (p. 7). Although some limitations exist to this study, including the use of a self-report format that may not accurately reflect practice (Constantine and Ladany, 2000), the findings are an important step to drawing much needed attention to the variability and inconsistency problems surrounding forensic assessment with a growing diverse population.

Why This Study is Important

Although cultural diversity has been an important topic for many years within clinical practice, this has largely not been the case within forensic practice. Given the legacy and extensive body of research covering a multitude of complex issues that impact the intersection of law and psychology, it came as somewhat of a surprise that a dearth of research and corresponding literature exists on cultural issues in the field, and even less when specifically considering culture and competency to stand trial evaluations. Perhaps the reason behind this is

that research in the field has tended to follow legal decisions, and until the recent decision in *Washington v. Sisouvanh*, culture had largely been unseen by the court system.

The goal of this study is therefore to help expand and advance the conversation about culture with regard to competency to stand trial evaluations. To accomplish this, this research strives to address this topic in three specific ways through focusing on what forensic psychology evaluators have experienced in the course of their work. First, it starts to explore how culturally different defendants can be perceived by forensic examiners, second, it begins to look at what examiners are or are not considering with respect to cultural differences in defendant populations, third, this study asks where are possible challenges occurring within the psycholegal system that effects the consideration of culture in competency evaluations. Thus, overall the lack of previous research regarding cultural impacts on competency to stand trial evaluations is where this study finds its relevance. This is especially salient given the changing legal landscape with respect to consideration of cultural diversity as exemplified by the previously discussed case laws coming out of Washington State, and continued growth of a culturally diverse population in the United States.

CHAPTER III: METHODOLOGY

“Every way of knowing rests on a theory of how people develop knowledge” (Charmaz, 2014, p. 6). Within social science research enumerable ways of developing knowledge exists. For this study, grounded theory was used since it considers elements lost in other types of research. The nature of the research presupposed a qualitative approach to serve the purpose of exploring and understanding how it is that forensic examiners conceptualized cross-cultural differences when conducting competency to stand trial evaluations. Creswell (2014) noted that often questions that look at how a phenomenon occurs are better answered by using a qualitative research method, such as grounded theory. Additionally, this research was exploratory. A comprehensive review of the current literature revealed very little information on the topic of concern, and no specific theory had yet been proposed that explained what was occurring within the social phenomenon.

When using a grounded theory method, it is critical to identify the philosophical perspectives of the researcher. While perspective of the study participants is central to the framework necessary to explain a social phenomenon, the researcher serves as the primary instrument of data collection. Grounded theory requires the researcher to have direct involvement in the research in order to comprehend and document the participants’ perceptions and experiences (Creswell, 2013). Philosophical perspective and worldview form the basis for the underlying guiding process by which the study is shaped, conducted, and ultimately interpreted. “Whether we are aware of it or not, we always bring certain beliefs and philosophical assumptions to our research” (Creswell, 2013, p. 15). As such, it is critical that the researcher remain aware of what guides his perspectives and considers how they may impact the study. Not only does this awareness provide researchers and consumers of the research with an

understanding of where and how the process was formulated, it also works to counteract inherent biases and even destructive presumptions that may be present in the study (Adam, 2014).

A Brief Introduction to Positivism

In 1856, August Comte first described what he called positive philosophy, later referred to as positivism (Schmaus, 2008). He called it positive philosophy in opposition to what he saw as a “negative philosophy” of the Period of Enlightenment. The dominant enlightenment philosophies of the eighteenth century stressed the role of individual reason in all human affairs, which Comte saw as detrimental to social order (Hamersley, 1993). Comte believed that an overabundance of individual reason meant an increasingly critical stance against traditional institutions, to which he concluded would destroy the underlying foundations of law and fact that steered social consensus (Hamersley, 1993).

To counter what he perceived as the destruction of social order, Comte sought an abandonment of the increasing popularity of a subjective belief in the metaphysical, and with it the promise of an absolute truth. He saw these as driving forces behind the misconceptions of individual reason (Henn, Weisntein, & Foard, 2009). Instead he called for a refocus on methods of observation and experimentation to discover the laws of nature that tie facts together (Schmaus, 2008). Positive philosophy therefore holds that accurate and value free knowledge is possible, human behavior can be studied so long as an emphasis on what is tangible and measurable remains the focus (Schmaus, 2008). Ultimately the application of the epistemological perspective of positivism to sociocultural study has been in the construction of knowledge through strict adherence to methods of scientific reasoning as a means of identifying universal laws that explain all social phenomena (Henn et al., 2009). While this perspective may appear to be a fantastic means of studying and understanding human behavior, culture, and thought, it has

brought with it both unintended and purposeful consequences that have left a legacy of oppression within social science research.

Oppression in Social Science Research

Research driven from the positivism perspective requires the testing of hypothesis against a preconceived theory. This process places the researcher outside of the participants and allows for the perception of maintaining control over all aspects of the study (Pollner, & Emerson, 2001). This means that positivism requires the researcher to not only decide the significance of the data and how to order it, but to determine what is counted as data in the first place (Pollner, & Emerson, 2001). The emphasis of empiricism is grounded in the positivism paradigm, which drives the scientific method and sits at the center of quantitative research. By relying on a strict adherence to the scientific method, which was originally utilized for the study of the natural world, researchers have misconstrued its purpose through the application to socially constructed phenomenon such as culture (Vazquez, 1995).

The application of the scientific method, framed within positivism and constrained by empiricism, has pervaded sociocultural knowledge gathering by western researchers. Although masqueraded as scientific objectivity, the majority of findings, theories, and laws have been steeped in a perpetuated oppressive and destructive Eurocentric bias (Sue, Arrendondo, & McDavis, 1992; Hall & Livingston, 2003). The result of this is that much of the scientific knowledge has been produced by, and in the explicit interests of those in power, and used as a fundamental part of the construction and maintenance of unequal and oppressive social orders (Gruffydd-Jones, 2004). Positivistic thought has led to a partitioning of reality that has built knowledge based on multiple hierarchical separations steeped in Western values, e.g. “human beings over nature,” “mind over body,” “self over other,” “objective over subjective,” “white

over non-white,” “civilized over uncivilized,” and “educated over uneducated” (Cruz and Sonn, 2011). Through this, the resulting constructed knowledge has been conceptualized as the natural order of the world; that Eurocentric and Western beliefs and values are at the top of the hierarchy with the supposition that this is just naturally the way things are.

The positivistic approach to research has contributed to the proliferation of centuries of cultural oppression around the world identified as colonizing methodology by Smith (1999), and coloniality by Cruz & Sonn (2011). Stemming from the broader mechanism of oppression identified as imperialism, colonialism is the establishment and forcing of capitalistic ideas and values onto other cultures (Stuchtey, 2011). Key among these colonial ideas and values has been in the application of empiricism to shape discourse, create knowledge, and invent truth (Cruz & Sonn, 2011).

Not only has positivism functioned from the nomothetic perspective (tending to discount differences), but it has also operated from an etic one as well (Lincoln & Guba, 2000) creating the removal of the researcher from the population or culture being studied. The combination of reductionist and removed perspectives have been highly criticized for perpetuating a bias that has proliferated oppressive views of non-European populations through the application of the scientific method to study of social-cultural constructs (Sue, Arrendondo, & McDavis, 1992; Smith, 1999; and Reed, 2008). The American criminal justice systems is one example, of how this perspective operates within the context of a social construct. As with other large social systems, the application of a positivist approach to studies of American criminal justice has led to “stereotyping, discrimination, and ostracism designed to suppress alternative ways of knowing and living” (Smith, 1999, p. 69).

The impact of positivism on psychology has a long history of being at the forefront of oppressive thought and action against those not in the dominant majority. Psychological research in particular has been called out as “a tool of oppression” (Sue, 1999, p. 32); as a source of exploitation wielded by social institutions that, in the interest of keeping and expanding their own power, have distorted reality by obstructing those in the minority from having the ability to develop their full potential (Della Fave, 2013). Not only has this distortion of reality limited entire groups of people from realizing equality, but it has also prevented them from being able to see their situation as it really is (Della Fave, 2013). This is what Ratner (2011) referred to as the psychology of oppression.

While psychology is well suited to trace how the exploitative actions of those in power change and devalue the culture of others, and how this then shapes behavior, (Ratner, 2011) the field as a whole has largely failed to do this (Della Fave, 2013). Just a few years prior to this study, Rabionet, Santiago, and Zorilla (2009) pointed out that most psychologists still had limited understanding or had not received training necessary to enable them to work from or incorporate the perspectives of minority populations. Instead, the majority of psychologists continue to reflect the perspective of the cultural majority that has proliferated through the ongoing legacy of colonial positivism.

Post-Positivism

In 1967, sociologist George Basalla published a model of evolutionary progress that challenged the universalistic perspectives of positivism. Basalla outlined three evolutionary stages of the globalization of empiricism in science. First, that non-western societies were viewed as merely “passive reservoirs” of data, a tabula rasa for scientific diffusionism (Raj, 2013). Second, that non-scientific societies would be dependent on the colonial influence of the

West to adequately interpret their data ‘scientifically.’ Third, colonized societies would “gain maturity” and adopt the scientific method based on Western colonial scientific standards (Raj, 2013). Basalla’s thesis helped bring attention to the cultural and economic discrimination and appropriation that had been inherent in the colonizing methodology of positivism.

Reaction to Basalla and others who oppose positivist epistemologies, has led to a line of argument in the Foucauldian tradition of denouncing science all together (Headrick, 1981), a reversion back to Enlightenment philosophies. While this may be attractive to some, a less revisionist alternative to the destruction of science arose that moved exploration in the social sciences away from the positivistic system of formal empiricism of hypothesis and constructed discovery. Aptly named post-positivism, since it represented the thinking after positivism in that we can never be truly positive of the results (Creswell, 2014), this epistemology instead embraced a broad perspective of discovery, recognizing that there are many ways and methods to conduct research.

At the core, post positivist research has recognized that theory and practice cannot be separated, and that theoretical context cannot simply be disregarded or removed from the research findings. This concept has shown the inadequacy of the positivistic perspective that research is only concerned with correct techniques for collecting and categorizing information (Schatz & Walker, 1995). Additionally, and equally fundamental to research is that the researcher’s motivations, perspectives, and influence are central and critical as well (Schatz & Walker, 1995).

Overall, post-positivist values of research seek to dispatch with the hierarchical perspective of objectivity over subjectivity. Instead the emphasis is placed on the complexity and multiplicity of the human experience allowing for interpretation within context, understanding of

how people construct and maintain perspectives, and ultimately challenge preconceptions of reality (Creswell, 2014; Schratz & Walker, 1995). Underlying these principles is an ontological belief that a single reality does exist, but since post positivism notes that there no absolutes and different perspectives only offer a partial glimpse of reality it is beyond our ability to ever really understand it (Creswell, 2013).

Figure 1 will assist the reader in understanding the thought progression that influenced the methodology involved in this research. The figure takes the reader from overarching influence of my worldview as it relates to this research through the selection of the research type.

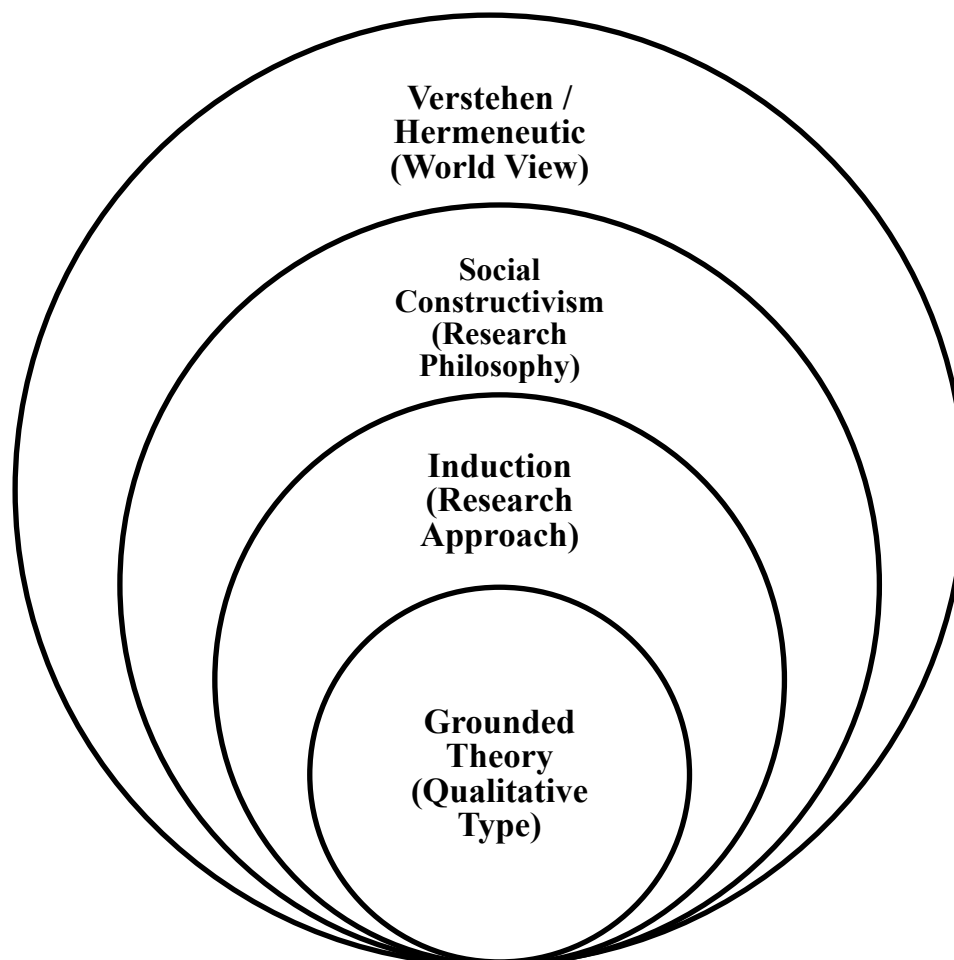


Figure 1: Methodology Progression

World View: Verstehen and Hermeneutic Philosophy

Post positivist philosopher Max Weber's philosophical views involved the appropriated word Verstehen, which translates literally "to understand" (Diggins, 1998). Weber was influenced by hermeneutic philosopher Wilhelm Dilthey, who acknowledged Verstehen earlier in his work to describe the first-person participatory perspective that people have on their individual experience as well as on their culture, history, and society (Harrington, 2001). Dilthey's application of Verstehen was closely connected to his concern for the autonomy of Geisteswissenschaften, the sciences of the spirit (which popularly is also known as the social sciences), from that of natural science, Naturwissenschaften. Dilthey believed that to successfully study social phenomena, researchers should not look for explanations in terms of universal laws, but instead to make a compassionate human connection with the phenomenon by means of Verstehen (Harrington, 2001). He argued that "the only way to acquire scientifically respectable knowledge of a phenomenon is to gain comprehensive insight into what is of crucial importance to the essence of the phenomenon" which, in the case of social phenomena, is understanding the meaning behind social thought (Smelser & Baltes, 2001, p. 16165).

Further refining Dilthey's views, Weber used Verstehen as a means of understanding different types of social action, rooted in the traditions and values that influenced the social calculations that he believed humans universally engaged in that accounted for and guided our experiences (Diggins, 1998). He suggested that an interpretative understanding of Verstehen through understanding social actions would identify ideal types by which all people could be conceptualized and understood (Diggins, 1998). While Weber's ideal types rarely exist in real life, the term Verstehen has continued on as a central philosophical theme. The meaning of the term however, has continued to metamorphose, shedding the empiricism of categorization

proposed by Weber, and instead bestowing an empathic individualism that has been attributed to current perspectives of Dilthey's work (Harrington, 2001).

Verstehen has most frequently been referred to as interpretative understanding, or a means to seek complete understanding behind the meaning of action from the other person's point of view (Bransen, 2000). Although colloquially referred to as walking in the shoes of another, this is a reductionist adaptation. Critics of this perspective have argued that a researcher's understanding of another person's actions remain as an interpretation influenced by the experiences of the researcher and not the subject, and as such these interpretations are not necessarily shared by the other (Bakhtin, 1973; Minh-Ha, 1991; MacCannell, 1992). However, even when our attempts to understand the other are unsuccessful "our discourses interact at 'dialogical angles' (sic) with others actions and self-interpretations, and these trade between each other" (Bakhtin, 1973, p. 150). In other words, Verstehen does not require complete understanding, instead it allows for some understanding of the other. While the researcher can take off the other's shoes at any time, there will always be some aspect of interpretation on the part of the researcher. Despite the inevitability of interpretation some knowledge and understanding about the other is gained and false presumptions challenged.

The adoption of Verstehen to a research stance requires treating the other person as a subject, rather than as an object to simply be observed, thereby avoiding what Minh-Ha (1991) referred to as "legitimized, but unacknowledged as such, voyeurism and subtle arrogance—namely, the pretense to see into or to know the others' minds, whose knowledge these others cannot, supposedly have themselves" (p. 66). It also implies that humans do not simply act at the whim of external forces, but instead create their reality by organizing their understanding of the world around them to give it meaning.

When individual meaning is considered in research, we begin to approach understanding, what hermeneutic philosopher Gadamer (1975) called, the practice of *reflective interpretation*. As we have encounters with other people, objects, or events our perception becomes altered as we reinterpret the encounter from our prior understanding. However, complete understanding is never possible as one can never fully see the other exactly as he is (Schwandt, 2000). Nor is the encounter static, but instead bound within the historical context under which the encounter took place (Schwandt, 2000). Furthermore, within each encounter there is a mutual alteration, both people are changed by the encounter and the encounter is changed by those who experienced it (Schwandt, 2000, and Stigliano, 1989). These concepts form the foundation of hermeneutic philosophy and played a strong role in how this research was conceptualized.

“Hermeneutics is not a methodology in the sense that experimental research is” (Stigliano, 1989, p. 47). Instead, it is within understanding that ontological distinctions are made whenever objects, historical events, and people are encountered. “Hermeneutics, then, articulates the understanding people embody as selves, as members of a community, and of their world” (Stigliano, 1989, p. 49). This philosophy holds a relativist stance that assumes there are numerous and equally valid realities, and as such meanings are hidden and interpretable (Ponterotto, 2005). There is no fixed reality that can be discovered, rather the meaning of reality does not exist independent of the interpreter and is instead shaped by the intersubjective aggregate of the interpreter’s experiences with the dynamics of the environment, situation, and time (Longino, 1996).

Within the interpretative and dynamic existence of reality, as it is uniquely and individually perceived, is how experience is expressed through the use of language. Hermeneutic philosophers have described language as neither simply a primary tool for gaining knowledge of

the world, nor as a means for which the world is ordered, but rather it is “what allows us to have the world we have.” (Schwandt, 2000, p. 198) Language then is the way in which people disclose the world as “self-interpreting beings” (p. 198). Language according to Gadamer has the potential to disclose meaning and truth in its interpretation. However, the interpretation is constructed within the cultural “backdrop of shared understandings, practices, language, and so forth” (Schwandt, 2000, p. 197).

Since this study is experientially based and dependent on discourse, hermeneutic philosophy informed the interpretative interview process with the study’s subjects. Following this philosophical perspective, the researcher knew it would be impossible as an outsider to fully understand the perspectives of the subjects interviewed. However, the *Verstehen* of the encounters with the subjects allowed for any interpretations to be informed by broad insight into what is of crucial importance to how cross-cultural experiences have influenced evaluations of competency to stand trial. It is from interactions with the subjects and exploration of their experiences that shared understanding began to emerge and ultimately formed the overarching theory presented in this study.

Research Philosophy: Social Constructionism

Originating as a way to make sense of reality, social constructionism has increasingly emerged as an important perspective within social science research (Charmaz, 2014). Andrews (2012) linked the development of constructionism to Francis Bacon’s idea that observations are an accurate reflection of the world that is being observed. Bacon argued that the best way to discover things about nature was to use experiences rather than commit to a specific theory that would steer the observer’s experiences into supporting the theory rather than seeing the evidence for what it really is (Urbach & Gibson, 1994).

Constructionists consider knowledge as having been created by the person experiencing it rather than something independent of the observer to be discovered by the mind (Schwandt 2003). However, that is not to say that it is made up, instead the construct experienced by the observer corresponds to something real. What is experienced as reality is socially defined by the subjective experiences of everyday life and is how the world is interpreted rather than trying to conform to an objective reality of the natural world (Andrews, 2012). Constructionism is the defining of the world around us through the experiences of the individual who is grounded and defined by his cultural and social boundaries; in other words, it is society that constructs the interpretation of reality (Andrews, 2012). To emphasize this, Andrews (2012) used the following example: Andrews explained that there is no doubt within social constructionist thinking that a disease can and does exist as an independent reality, however, it is in the naming of a disease and defining what constitutes a disease that is where the potential for knowledge to be socially constructed exists. Social constructionism does not argue that objective reality exists, nor is concerned with the nature of being, or the ontology of what is real and not real. Instead it is wholly concerned with the understanding of how knowledge was constructed, what the context was for which the knowledge and meaning were derived, and what social mechanisms contributed to the generation of that meaning (Creswell, 2014).

That social constructionism concerns itself with the creation of knowledge and is not concerned with ontology (Andrews, 2012) makes it an ideal fit for the type of research in this study. The dynamic nature involved in ongoing reinterpretation of socially constructed definitions used to explain psychological mechanisms, as well as changes in processes critical to the criminal justice system, lends to changing perception of the reality of both systems. So in a field such as forensic psychology, where both systems interact and multiple perspectives come

together, it is important to understand how knowledge is constructed. By adopting a social constructionist perspective, it is the goal of this study to better explain how consideration of culture has been impacted by the construction of knowledge within the intersection of psychology and the criminal justice system, specifically with regard to how those mechanisms are involved in the evaluation of a defendant's competency to stand trial.

CHAPTER IV: METHOD & PROCEDURE

Shifting from methodology to the method and procedures used in this study, Figure 2 illustrates the continuation of the research progression. It is presented at the beginning of this chapter to aid the reader with following the research strategy and the procedures employed.

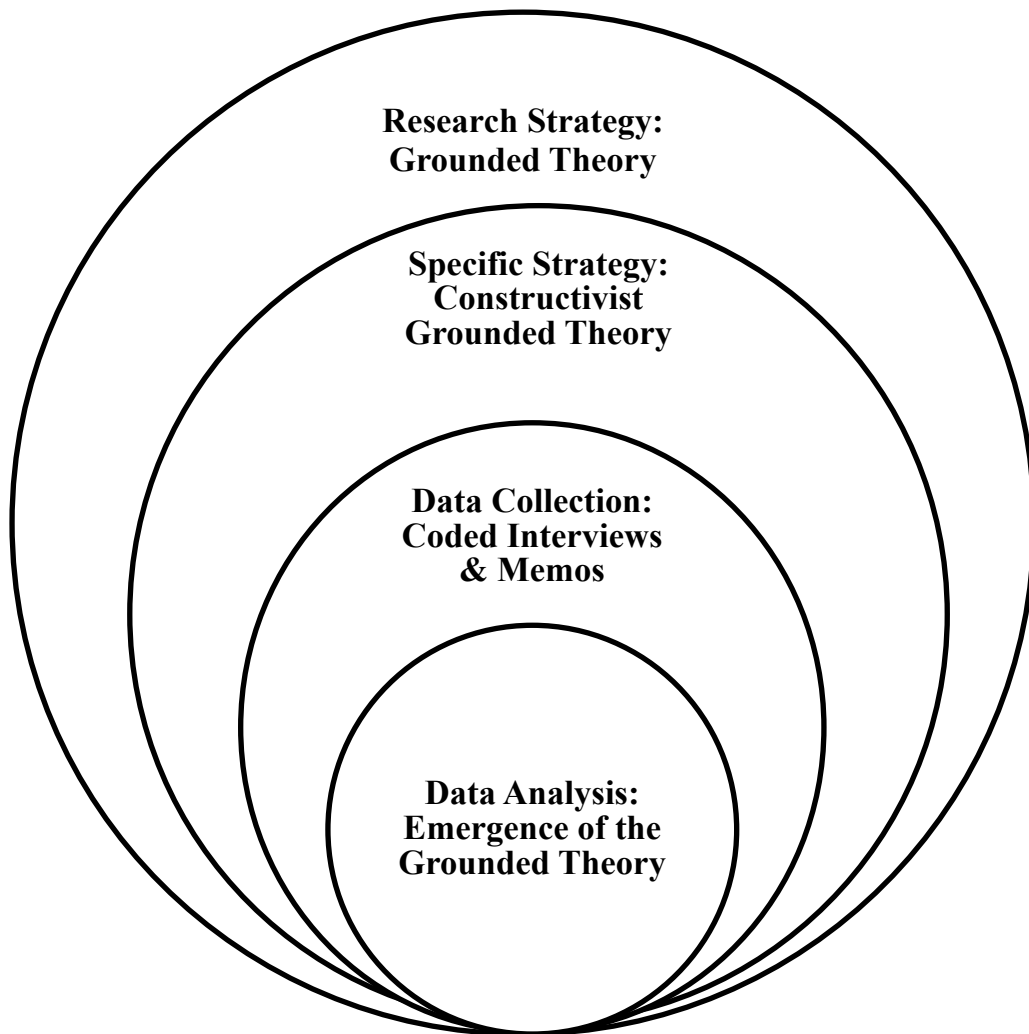


Figure 2. Method Progression

Research Strategy Methods: Grounded Theory

In the 1960's, researchers, Glaser and Strauss, challenged many of the traditional methodological assumptions being used in social science research. They argued, "systematic qualitative analysis had its own logic and could generate theory" (Charmaz, 2014, p. 7). From the concept, the method now known as grounded theory began. According to Glaser (1978), data collection in grounded theory methodology begins with a "sociological perspective of a general problem area rather than a preconceived conceptual framework... The researcher adopts an attitude of openness, which seeks to ensure that the "the emerging of concepts never fails" (p. 44). Glaser was referring here to the inductive nature of discovery, which follows the idea that one needs only to become aware of a problem to identify a way to understand and address it from within; rather than imposing preconceived ideas from the outside.

The basic tenet of the grounded theory methodology is the process of developing a theory that is grounded in data and formulated through data collection and analysis techniques (Charmaz, 2014). The inductive nature of the grounded theory approach requires data to be gathered through individual observation and interviewing. That data is then analyzed for patterns, and from the patterns a new theory is generated. This is in contrast to the deductive model, commonly found in quantitative and empirical research. Grounded theory does not rely on preconceived theories and pre-formulated hypothesis, but rather on a reflective and critical analysis of situations and contexts in the research problem or phenomenon (Charmaz, 2014).

One of the primary advantages of following data allows a theory to emerge rather than testing a hypothesis under specific and controlled conditions is the research can often be generalized. A theory developed from data from one particular area of study can often generalize to help explain problems in other areas. As Allan (2007, p. 9) noted "the methodology consists of

a systematic framework that, when followed, provides techniques for data analysis that are repeatable, generalizable and more rigorous than most qualitative research methods.”

Similar to other inductive research processes like phenomenological research, data are obtained through recording all observations and interactions with subjects around the phenomenon. Unlike most other research methods, however, once the data begins to be captured the analysis begins, rather than waiting until after all of the data has been gathered. To accomplish this, grounded theorist methods use multiple steps that engage the researcher in simultaneous data collection and analysis, what Glaser (1978) called a constant comparison of data through open coding. According to this procedure, which works as the basis for the entire research process, Glaser (1978) stated that “incidents are compared to incidents, and concepts to more incidents” (p. 62) until the concepts emerge and integrate into what he referred to as a “core category” (p. 95). The core category is what ultimately forms the basis for the theory.

Analysis of the data in the process of a grounded theory consists of corresponding procedures that include process-coding, clustering codes into categories, concept development by reduction of the codes, core variable emergence, review sampling of applicable literature, and ultimately core variable adaptation (Charmaz, 2014). Each of these steps involves a continuous and cyclical process of analysis until the core variables emerge and the data becomes repetitive, signifying saturation. With data saturation, the core category emerges.

All collected data is compared to the core category or variable and selectively coded. All categories that have emerged around the core category are then related through theoretical coding (Glaser, 1978) and are facilitated through “theoretical memos” (p. 83). These memos represent ideas about the codes and how the categories inter-relate. The memos form the description of the emerged theory, and without them the theory would lose context and

generalizability. Once the data has been coded and *memoing* has begun, the resulting analysis is then examined and situated within the context of current literature (Charmaz, 2014). Within the context of current knowledge, the researcher can more accurately interpret and expound upon broad generalizations produced from the central concepts, ultimately leading to the emergence of the theory.

Specific Strategy: Constructivist Grounded Theory

Grounded theory is a *constellation of methods* with numerous variants that emerge as the researcher engages in the process of data collection, management, analyses, and interpretation. Despite these variations, Charmaz (2014) identified five actions that nearly all grounded theorists engage in:

- (1) Conduct data collection and analysis in an iterative process
 - (2) Analyze actions and processes rather than themes and structure
 - (3) Use comparative methods
 - (4) Draw on data (e.g. narratives and descriptions) in service of developing new conceptual categories
 - (5) Develop inductive abstract analytic categories through systemic data analysis
- (p. 15)

For this study, a constructivist grounded theory methodology was selected to explore the perspectives of forensic examiners as they related their practice of forensic evaluation to the assessment of culturally diverse criminal defendants for competency to stand trial in Western Washington.

There are three main approaches to grounded theory, Glaserian, Straussian, and Charmaz's Constructivist Grounded Theory. While each theoretical framework presents

advantages, Charmaz's method moves furthest away from the positivist approach into a constructivist framework that allows both the researcher and the participants to mutually derive meaning from the data (Charmaz, 2014). While this has been challenged as a biased approach, Charmaz (2014) contended that the interaction between the researcher and the participants is never neutral and data generation in this process is mutually constructed, rather than unilaterally determined. Although Charmaz, as well as the Glaserian and Straussian approaches all derive meaning inductively, Glaserian and Straussian approaches contained aspects that could be criticized as being more concerned with establishing a positivist like validity within the research at the cost of relativity and subjectivity (Charmaz, 2014). Since this study is focused on a social justice issue housed within the construct of the criminal justice system, which has a history of prejudice and bias, it was imperative to conduct this research with a methodology that distanced itself from the historical oppression tied to colonialism. In addition to maintaining a social conscious, I also required a methodology that fit within my worldview and found constructivist grounded theory was a natural adaptation for this study.

Aside from allowing for a method for the exploration of this inadequately understood phenomenon, the use of this method also avoided many of the logistical, ethical, and potential legal concerns that could have arisen. To avoid potentially violating the constitutional rights of defendants the researcher avoided the use of a quantitative or other inductive process that would have required the need to formulate and test hypotheses with this vulnerable population.

Unlike traditional grounded theory principles, such as that proposed by Glaser, constructivist grounded theorists argued that the researcher is fundamentally subjective, and that multiple meanings are possible from the data (Charmaz, 2014). Social constructivists, like hermeneutists, believe that individuals derive understanding of their world from the subjective

interpretation of their experiences within their world (Schwandt, 2000; Creswell, 2014). These meanings, due to their subjectivity, can vary and place importance on understanding the underlying complexity of the experiences that drives an individual's interpretation to explain a phenomenon.

Utilizing constructivism in the qualitative process requires that the researcher pose broad and open-ended questions that allow individuals to construct their understanding of the situation from their interpretation of their interactions with others, including the researcher (Creswell, 2014). Crotty identified three main points of constructivism:

- (1) Human beings construct meanings as they engage with the world, they are interpreting.
- (2) Humans engage with their world and make sense of it based on their historical and social perspectives- we are born into a world of meaning bestowed upon us by our culture.
- (3) The basic generation of meaning is always social, arising in and out of interaction with a human community.

(Creswell, 2014, p. 9)

From these points, qualitative researchers construct their studies using questions that invite their subjects to share their views. While the researchers interpret meaning through their own lenses, they do so while gathering information personally within the context of the subjects' experience, and are able to generate meaning from the data while in the field, rather than being forced to do so through the validation or rejection of a hypothesis superimposed on the phenomenon.

Additionally, through the constructivist approach to grounded theory, there is space to acknowledge the researcher's interpretative lens. Rather than impose an unrealistic sense of

complete objectivity, constructivist grounded theory acknowledged that the interpretative lens can never be eliminated. Instead it can be bracketed to increase transparency within the process and place the emerging theory within an identified and specific context (Charmaz, 2014).

Through a hermeneutic worldview and social constructivist paradigm, the researcher's experience and training as a part of the interpretation of the data gained during this study could therefore be acknowledged and incorporated.

The perspectives of the researcher when working to establish the theoretical model included experience as a former police officer, college instructor in criminal justice, and having received clinical training with forensic psychological examination. These experiences informed underlying opinions and preconceptions of the way in which systems function with regard to cultural difference and adjudicative competency. They also allowed the opportunity to gain familiarity with some of the complexities and intricacies of the job requirements of the subjects in this study, which then challenged and altered perspectives through interactions with the study subjects.

In addition to accounting for the researcher's experience, the constructivist approach assumes a more interpretative perspective, and helps to situate the data historically. In an interpretive research paradigm such as this, the researcher and participant's co-construct meaning, rather than attempting to verify an existing hypothesis (Charmaz, 2014). This is important when addressing constructs such as the criminal justice system and psychological evaluations, as these are prone to change over time with new caselaw that reflects evolving attitudes and interpretation of the law. Finally, constructivist grounded theory is much more focused on the views and voices of the participant population, which is a key concept of what this study was centered on (Charmaz, 2014). It was the views and voices of the participants that

identified the phenomena, and it was through gained mutual understanding that the phenomenon was explained.

Procedures

Research Question

The research question has been stated here:

What are the perspectives of forensic evaluators in Washington State who are responsible for the examination of a defendant's mental competency to stand trial (CST) with regard to cultural influences for the defendant, and the existence of potential influence on part of the examiner?

Participant Demographics

In an attempt to answer the research question and explore the phenomenon of how forensic examiners engage in multicultural competency to stand trial evaluations, as many forensic examiners as possible were recruited. To qualify for the study, all of the participants had to have earned a doctoral degree in psychology, been licensed psychologists in the State of Washington, and responsible for conducting competency to stand trial evaluations. Notification for this study was distributed through a variety of means including use of the State of Washington employee email system, Washington State Psychological Association membership email lists, county court email systems, word of mouth, telephone cold calling, and internet searches for forensic psychologists in Washington. After several months of seeking participants, nine psychologists agreed to participate. All nine psychologists worked in various locations across Western Washington including as inpatient facility examiners, outpatient examiners, or in private practice.

Of the nine participants, three were female, and six were male. Two participants identified as immigrants to the United States, and one identified as a person of color. Three

participants spoke a language other than English fluently, and one stated that English was a second language. Participants varied in age from 26 to over 70, with the majority being between 30 and 45. Years of experience conducting competency evaluations also varied from over 20 years to this being the examiner's first year of experience, with a mean of 5 years.

A note about the participants. When approaching a social justice issue such as the one addressed in this research, it is important to understand why this study focused on forensic examiners as opposed to the defendants, who are ultimately impacted by the outcome of the competency evaluation. This study's participant focus on forensic psychology examiners was selected for two reasons. First, the primary research question asks how culture impacts the competency to stand trial evaluation. This question was phrased the way it was to allow for exploration of not only how the examiner considers a defendant's culture, but also how the examiner's cultural experience might also shape the evaluation. Since the examiners are the ones who holds influence over how a competency evaluation is conducted, they were identified as the agents of power (Erez, Rim, & Keider, 1986; Bergkamp, 2010). Conversely, while defendants may have beliefs about the evaluation process, they hold little influence for creating change within the competency evaluation process, and were therefore identified as the target (Erez, Rim, & Keider, 1986).

Data Collection Procedures

Each participant signed a consent form that described the nature, procedure, and implications of the study, as well as granting permission for the interview to audio recorded. A copy of the consent form can be found in Appendix B, and the Human Legal Rights Committee approval for this study can be found in Appendix A. Participant subjects who agreed to an interview were met face-to-face in their workplace when possible. As a secondary option, the

interview could be completed via telephone, however this mode of data collection did not allow for unspoken interaction, body language interpretation, or milieu effects, which limited the data available. Most interviews lasted an average of 45 minutes, with the shortest being just over 30 minutes and the longest being over an hour and a half. Each interview was digitally recorded and transcribed. The original recordings and the transcriptions were encrypted and saved, and stored separately from any and all participant identifying data.

Interviewing and Open Coding

From the moment the first interview took place, data gathering began. At the onset of the first interview, the participants were asked for clarifying details that encouraged them to lead the narratives that explored the details of their experiences. This utilized specific skills that followed the process of what Charmaz (2014, pp. 85–87) described as “intensive interviewing.”

Each interview began with the same general question asking about the psychologist’s experience with competency to stand trial (CST) evaluations and then progressed depending on the subjects’ experience and willingness to engage in the interview process. Although eight open-ended interview questions were generated to address varying aspects of the phenomenon, they were primarily used as a guide and the participants were encouraged to speak openly about their experiences, thoughts, and feelings. Open-ended questions were used because they “leave the response open to the participant’s experience and conceptions... (and) invites the participant to frame and explore his or her views (Charmaz, 2014, p. 97). A list of all eight questions is available in Appendix C.

Notes about body language, environment, expressiveness, and anything else that was apparent were taken during the interview. This later helped during memoing and provided context for the interview at the varying stages of analysis. After each interview the recordings

were transcribed and immediately coded. The interviews were initially coded line-by line using gerunds (the form that names the action of the verb, the *ing*). The purpose of line-by-line coding using gerunds is to bring the researcher into the data, forcing the examiner to reflect on each line individually, as well as within the context of the whole conversation. This initial coding provided a starting point from which to begin the constant data comparison process. It is important that the aim of this process is to code the possibilities as suggested by the data, rather than be concerned with the accuracy of the data (Charmaz, 2014).

In addition to using the gerunds process, initial open coding also revolved around both descriptive codes that helped describe the phenomenon, and conceptual codes that helped explained the relationship between the data and the theory. The initial codes were what allows for the break down, organization, and conceptualization of the large amount of raw data that was collected in the interviews. Grounded theory focuses on the concepts that emerge from data, and not the data per se (Holton, 2010).

Central and Theoretical Coding

As the initial open codes were developed, they were categorized into larger constructs utilizing *in vivo* language as much as possible, referred to as central or axial codes (Holton, 2010; Charmaz, 2014). By using the language of the interviewee, the researcher attempts to limit interpretive departure from the participants' initial meanings. To aid in this, Charmaz (2014, p. 127) identified a list of the following questions essential to the process of critically analyzing the data to identify significant processes and actions that were occurring for the participants:

- What process(es) is at issue here? How can I define it?
- How does this process develop?
- How does the research participant(s) act while involved in this process?

- What does the research participant(s) profess to think and feel while involved in this process? What might his or her observed behavior indicate?
- Where, why, and how does the process change?
- What are the consequences of the process?

Similar to the process utilized in open coding, the central codes emerged from a constant comparison, referencing, and re-examination of the data derived during and between each of the interviews as new data was obtained. It is important to keep in mind that the coding process is not a discrete stage as it is in some research methodologies, but rather is a cyclical and continuous aspect of the analytical nature of grounded theory (Holton, 2010).

As data accumulated, the constructs from which the central codes represented emerged. This emergence enhanced the relationships between the codes around the “axis of a category” and answered the questions of “when, where, why, who, how, and with what consequences” of the participants’ experiences (Corbin and Strauss in Charmaz, 2014, p. 147). The ability to answer those questions required a saturation of data. Saturation was identified when new codes or constructs were no longer emerging despite the accumulation of more information. Data saturation is required to allow the identification of the themes that explain the studied phenomenon (Saunders et al., 2018).

The key to the development of the central codes and, ultimately the theoretical codes, is in a high level of interrelatedness between the original open codes. By identifying how these codes related and influenced each other, the steps to the theory were allowed to emerge. After all of interviews were analyzed and the data coded, a final theoretical coding pass was completed. This final pass linked the central codes together, which showed the relationship between the theoretical codes and allowed for the main theoretical code to emerge.

Memo-Writing (Memoing)

Although noted later in this chapter, memoing is a critical part of the data collection process. Like the coding process, memoing began during the interviews and continued throughout the entire coding process and even into the analysis phase, to a limited extent. Memos can be anything from a description, an identified thought that arose, a single word or phrase, or a detailed explanation. Memos were critical to identifying additional data, situate all of the data contextually, and allow for interconnectedness of the codes to emerge and then enhance understanding.

Memos also included the researcher's thoughts and feelings during this process, and included information from discussions with others about this study, as well as any other experiences that were related to the development of the grounded theory. Memoing data was analyzed alongside the interview transcriptions. "When you write memos, you stop and analyze your ideas about the codes in any – and – every way that occurs to you during the moment" (Glaser, 1998 in Charmaz, 2014, p. 161).

Validity

Validity within any study is the responsibility of the researcher ((Denzin and Lincoln, 2005; Creswell, 2013). Validity in qualitative research addresses the accuracy of the data (Creswell, 2013), and corresponds to the idea of credibility (Sikolia, Biros, Mason, and Weiser, 2013). In grounded theory research, validity is most frequently addressed through utilizing triangulation, member checks or other participant involvement (Kolb, 2012; Creswell, 2013). Lincoln and Guba (1985, in Bergkamp, 2010) considered study trustworthiness, or validity to be high when "the categories and the model created emerged directly from the interview data" (p. 43). This study's theoretical model and the codes that it draws upon was grounded directly from

the data derived from the interviews with the consumers and participants of the system within which the model is based. Additionally, this study used theoretical sampling, triangulation, member checking, and peer debriefing as methods to ensure validity.

Theoretical Sampling

As a key method for ensuring validity, theoretical sampling “seeks and collects pertinent data to elaborate or refine categories in the emerging theory” (Charmaz, 2014, p. 192).

“Theoretical sampling pertains only to the conceptual and theoretical development of (the) analysis: it is not about representing a population or increasing the statistical generalizability of (the) results.” (Charmaz, 2014, p. 198) In other words this process calls for the continual review of the data at various points with the emerging core theoretical code in mind. Theoretical sampling starts with the data, constructs tentative ideas about the data, and then examines the ideas to see if they are supported by the data. In addition to checking the original dataset, this study also utilized the academic literature from adjacent fields identified in chapter two as further evidence to support what the data was saying.

Triangulation

“Triangulation is a technique used to accurately increase fidelity of interpretation of data by using multiple methods of data collection” (Glense & Peshkin, 1992, in Kolb, 2012). To accomplish triangulation, the researcher used interviews of multiple participants with varying years of experience as well as age, gender, and cultural identity. In addition, the data was analyzed over time, supported with literature from related fields, and supported with consultation with other experts in the field during the data coding and analysis processes.

Member Checking

“Member Checking generally refers to taking ideas back to research participants for approval” (Charmaz, 2014, p. 210). Member Checking supports the co-constructed nature of knowledge developed by grounded theory methods, by giving participants the opportunity to engage with and add to the interview and interpreted data (Birt, Scott, Cavers, Campbell, & Walter, 2018). Not all of the participants responded to requests for member checking. Those who were available reviewed the transcripts of the interviews as well as the emerging theory. The four responding participants confirmed accuracy of the interview and found the emerging theory to be both relevant and fitting to what they were observing in their work.

Peer Debriefing

Lincoln and Guba (1985, in Barber & Walczak, 2009) defined peer debriefing as “the process of exposing oneself to a disinterested peer in a manner paralleling an analytic session and for the purpose of exploring aspects of the inquiry that might otherwise remain only implicit within the inquirer's mind” (p. 3). Peer debriefing allows the researcher to probe for deeper understanding, test upcoming ideas and steps in the process in a safe area, as well as test gain encouragement, and support from peers (Barber & Walczak, 2009).

In addition to seeking guidance and consultation from the committee members reviewing this study, four peers, who were involved in their own forensic psychology research were consulted to discuss the emergence of the code categories and the resulting grounded theory. Each of the peers had no direct connection to this research and provided ideas and questioned concepts that neither the researcher, nor dissertation chair had foreseen. Through the introduction of new ideas via different contextual lenses, peer debriefing aided in the formalization and structure of the order of the theory.

CHAPTER V: FINDINGS & ANALYSIS

Forty-three conceptual codes developed out of two hundred and thirty-three codes developed during open coding. During the continuous revision process involved in selective coding the open codes were refined and grouped based on similarity, this helped to identify the more grounded, or central, data points from the data set. At this stage the codes were collapsed into conceptual categories that would ultimately make up the theoretical codes that formed the basis for the grounded theory. To accurately place the codes into related categories, all of the coded data, along with the original quotes by the respondents, and memos generated throughout the coding process were systematically reviewed.

The theoretical categories that emerged from the coding process were *Defining Culture*, *Systemic Constraints*, *Reliance on Others*, *Emotionality*, *Cultural Impact On Diagnosis*, and *Culture As A Nuisance Variable*. Table 1 provides a listing of each of the categories, the number of times they occurred within the interview data, a working definition for each code, and theory implications. Each of the theoretical codes was instrumental to how the grounded theory emerged, with Culture as a Nuisance Variable as the center theoretical code and the most densely interconnected with the other theoretical categories.

This chapter illustrates the relationship between the theoretical categories, this chapter will explain each of the categories by defining their role within the process of the grounded theory formation and include direct quotes from the respondent interviews to allow the reader the opportunity to see how the data unfolded. For the sake of continuity with the sequence of the grounded theory, which the reader will find in the next chapter, the theoretical codes are discussed in order of occurrence in the theory, rather than presenting the central theoretical category (Culture as a Nuisance) first.

Table 1

Theoretical Codes

<u>Category Name</u>	<u>Definition</u>	<u>Theory Implications</u>
Defining Culture	Attempts by examiners to define culture within the context of forensic evaluation. Involved consideration of demographic features and degree of enculturation versus acculturation.	Defining Culture is a key component to how examiners conceptualize defendants within the confines of the legal system and fallacies of the Mystique of Law.
Systemic Constraints	Limitations placed on examiners and Reliance on the legal process with regard to culture as a variable in competency to stand trial evaluations	Systemic Constraints are born out of the Mystique of Law and are the manifestations of the criminal justice response to addressing culture.
Reliance on Others	The awareness and steps examiners have used or not used to help address culture in their evaluations.	Reliance on Others is generated out of how examiners define culture and then react to the systemic constraints placed on them.
Cultural Impact on Diagnosis	The recognition or denial of how examiners' perceived culture as a factor in determining diagnosis that was identified by examiners as the first and foremost requirement in determining competency to stand trial.	Cultural Impact on Diagnosis influenced examiner's reliance on others, and impacted perception of culture as a nuisance variable.
Emotionality	Emotional reaction by examiners to the issues of culture as a variable for consideration.	Emotionality captures the frustration, annoyance, discomfort, and surprise examiners have felt while addressing culture.
Culture as a Nuisance	The internal mechanics that direct the examiners reaction to how they consider culture in their evaluations.	Culture as a Nuisance is the key foundation for this theory as it represents the link between systemic issues of culture and how examiners react to it in their evaluations.

Table Format adopted from Bergkamp, 2010.

Defining Culture

Under obligations such as *stare decisis*, which requires courts to generally follow historical legal precedent, and traditional practice originating in common law, the legal system typically goes to great lengths to define terminology and concepts that are deemed critical to its application and defense (Ho, 2015). As such a forensic examiner's role and responsibilities have been fairly well-defined beginning with the Dusky Standard and has since been shaped by numerous other federal and state case-law decisions, as well as through state statutes. The Washington State Supreme Court decisions in the *Sisouvanh* and *Ortiz-Abrego* cases however created a conundrum for examiners by not providing direction or definition in its findings when the Court called for forensic examiners to consider culture in the evaluation of a defendant's competency to stand trial. Prior to these cases, culture had largely been ignored by all levels of the court system in both Washington State and elsewhere in the country, and as such no agreed upon legal definition for culture was developed.

Despite the recent legal attention to culture as a possible variable in competency to stand trial evaluations in Washington State, defined parameters for what the court meant by culture have been not addressed. So rather than helping define the responsibilities of the examiner, as the court has done historically, the lack of specificity in the Washington State cases left examiners with significant questions as to what was included in the definition of culture, and how or when it should be considered. "The concept of culture is troublingly vague and, at the same time, hotly contested, and law's relation to culture is as complex, varied, and disputed as the concept itself" (Sarat & Kearns, 1998, p. 1). It has even been suggested that "[t]he relationship between law and culture should not be defined" (Coombe, in Sarat and Kearns, 1998 p. 21).

Without specific legal direction, the forensic examiners in this study have adapted their own definitions of culture. Interviews with the examiners revealed that their approach to define and consider culture was to separate out different aspects of what constitutes a person's cultural identity, leading them to frequently generalize a definition of culture as one or more demographic identifiers.

The examiners primarily identified native language, geographical origin, and race to define culture. Less frequently, they also considered ethnicity, social class, level of education, gender, age, and generational experience. While the demographic categories the examiners spoke to have a degree of relevance in the defining of culture, taken separately they cannot adequately identify the shared attitudes, beliefs, values, and knowledge that influence defendant behavior and thinking that are driven by their culture (Li and Karakowsky, 2001). The following quote is one example that shows the challenge the examiners in this study faced when they began to try to articulate how they considered culture.

"It depends on your definition (of culture) I guess. Initially I thought about people from different countries, but there are people from other cultures other than from my white middle class that I regularly evaluate people from, so... I guess it would be a spectrum then?" (3.7–3.9)

Language as Culture

Language was the primary means by which the examiners identified culture as a possible variable in their evaluation. The examiners routinely commented that they often did not have a lot of information ahead of their first meeting with a defendant. However, they were usually made aware through various means if a defendant was not a native English speaker and required the use of an interpreter. For many of the examiner's this was the first indication that they might

have to consider culture as a variable. The following are examples of how examiners identified language as a key variable for consideration:

“When working inpatient, frequently the most common people we get not from the U.S. or a different culture are Russian speaking, or Spanish speaking, or Tagalog speaking.” (1.8)

“The main difficulties have been in language.” (3.20)

“As it turns out, there weren’t any cultural features as to what this guy was doing, he had general mental illness symptoms, but certainly the language was a factor. So any time you have a language differential, which is part of that culture, you have to consider that first and foremost.” (5.26)

“An obvious dimension of how culture impacts competency is one of language and being able to communicate adequately.” (9.30)

In most instances the examiners noted that once they identified that a defendant spoke a different language, they would then begin to consider other factors, like the defendant’s country of origin, and time they have spent in the United States. Time spent in the United States speaks to an examiner considering the degree of acculturation that may have impacted a defendant’s cultural identity.

“It can be as simple as maybe there’s a language barrier and then I’m like wait, where did you grow up, and how long ago did you move here?” (4.80)

“Culture is always an issue, anytime we have someone from a foreign country and speaks another language, even if they speak English, there are certainly some cultural overflow, or cultural implications in your interactions with them, they may not completely understand our societal mores, so there certainly is that aspect probably in every case.” (5.41)

“And then also, if there is an interpreter that is required by the court, that usually tips you off as well to maybe start thinking about some things and thinking about if you need to have these cultural considerations.” (7.34)

While language can be a beginning for examiners to consider culture in the evaluation it was also identified as a challenge to the evaluation, and something to be overcome. Most language barriers were addressed with the use of interpreters, although the examiners identified that the use of interpreters was potentially problematic for a number of reasons. The use of interpreters was introduced here, as their use was relevant in the examiners’ consideration of language to help define culture, but the challenges and advantages identified by the examiners when interpreters were used is discussed later in this chapter with the theoretical code *Systemic Constraints*.

“There’s always a problem with the factual understanding when there’s a language gap and they haven’t had a translator.” (4.20)

“Often times they don't even require an interpreter at all, they speak English just fine. For whatever reason, one was ordered.” (7.36)

“Other language issues have to do with literacy and whether or not written materials having to do with the case are presented in writing in a language that the defendant understands.” (9.33)

“A lot of the issues are language in addition to culture and they (the court) think we have the language part down because we use interpreters, I think that's something that kind of may be part of the problem. I don't think we have the language part nailed. Many court interpreters actually probably recognize this, but their hands are tied.” (9.173)

Geography as Culture

In addition to language, all of the examiners in this study also considered the country of origin for defendants in how they tried to define culture. All of the examiners seized on the idea of geographical difference between a defendant's country of origin with the United States to attempt to place a cultural context around why some defendants' fail to understand and conform to the legal norms of the dominant society in the United States. The examiners conveyed statements in different ways that relayed the message that they were aware that these defendants were foreign born and perhaps held a differing worldview.

"I've encountered a variety of backgrounds I've had an individual from Sudan, a couple of individuals from Mexico, one or two from Russia, a couple from the Pacific Islands Micronesia places like that. Pretty much all over I would say, and they are all different from here." (2.7–2.8)

"There are a few people like me, but more less like me, and many who come from very different places." (3.10)

"Unless you lived there or have the experience, you just don't know." (4.126)

"We typically get a lot of people from different countries, a lot of different ethnicities and from different backgrounds." (5.5)

"There was this one woman who was a refugee from an African country and just had not had any real exposure to the American legal system. Where she came from everything was, the law was enforced by peers in the moment. So, there was no real legal process to go through. So you really had to understand this, where she was coming from when talking with her." (6.24–6.26)

Along with geography, shared experiences in a specific geographical location were also identified as a key cultural factor. The concept of shared experience also ties into the consideration of a person's generation in attempting to define their culture. Generation and age

are discussed later in this section. In the example below, the examiner has referred to the experiences of people who witnessed the atrocities of the Killing Fields in Cambodia in the 1970's under the Khmer Rouge regime:

“I learned that if I had somebody from Cambodia and it hit the right time frame, I really needed to ask about that, because it impacted millions of people.” (3.85)

Race and Ethnicity as Culture

Race and ethnicity were identified in the majority of interviews as important to defining culture for a defendant. However, as race was discussed, it often presented as the defining characteristic for some of the examiners to make assumptions about how defendants identified themselves and perceived the world. It should also be noted that the majority of the examiners in this study identified as white, which appeared to correlate to caution around this category when the examiners chose to discuss it, as they sometimes expressed concern about sounding racist or offensive. DiAngelo (2011) referred to this type of reaction as White Fragility, which she defined as “a state in which even a minimum amount of racial stress becomes intolerable, triggering a range of defensive moves” (p. 54).

Race is perhaps the most charged demographic category in the United States. There is a one-dimensional structure inherent to race in how the United States was founded and built its national identity (Williams, 1996). Static boundaries have been created for race that carry the historical stereotypes and ignorance that have led to assumptions attributed to each racial category (Williams, 1996). However, to question the stability of those assumed racial identities means to disrupt the idea that people can be placed into the categories at all. This idea runs counter to the continued use of race as demographic, which in this study was also used as a means to ascribe cultural attributes to a defendant. This might in part explain the unease that the

majority of the examiners experienced when presenting race as a means of defining culture. “For questioning the “purity” of Whiteness and the “otherness” of “of color” is to question the myths on which racism rests” (Dutro, Kazemi, Balf, and Lin, 2008, p. 294).

“So I suppose in all honesty I think probably the biggest cultural thing that I have seen. More common one actually is, how do I say this, sometimes individuals who are primarily African American will respond not in a positive way and in a very anti-white people in a position of power kind of way, that because I’m white I can’t be judging them, like that and they see that many of the questions we ask as demeaning or coming from a superior position. Just to clarify I’m talking about people who are born in the United States, Black Americans, not recent immigrant populations from Africa.” (1.94 and 1.99)

“You know, there’s how I try to come across and then on the other hand there is their filters that affect that and a lot of that is going to be cultural. I’m white and I have to talk to a lot of patients who aren’t.” (3.103–3.104)

“Frequently I have a difficult time with African American people, but I think a lot of that has to do with the climate though right now. Like, the shootings you see on TV and all this stuff, but I feel like it plays the biggest role when I’m interviewing an African American person and they don’t think I understand what they are going through and they think I’m just part of the problem and part of the system and that there is no way they can get a fair trial, and that I don’t understand what they’re going through.” (4.6–4.7)

“And like okay, as example, this seems like it’s not paranoid, this is a legitimate problem, you’re like, we know that if you’re African American you’re probably more likely be found guilty, so like ok that’s legit, but does it rise to the degree that it’s really going to impact their ability and does it rise to the degree that its some sort of delusion or major mental illness” (4.52)

“Well sometimes it takes more effort to put yourself in someone else’s shoes. It doesn’t come naturally, it’s hard, and is something that you have to constantly be reworking in your mind to remind yourself of where this person is coming from. Anyway so, this was an African American young man, who was raised on the streets and didn’t go to school much and kind of lived the sort of street thug kind of life.” (8.30 and 8.34)

One examiner considered race and ethnicity as starting points, as well as divergent categories in defining a defendant’s culture during an evaluation. Interestingly, the examiner also spoke to an importance of taking into consideration the ethnicity of court officials as well.

“... There are other cultural differences that have a particular importance with certain cases than with others, but I think that there are people who have elaborated on it better than I and that concerns various issues that involve the cross cultural relationships between the defendants and the players in court and of course that depends on the specific ethnicities of the different players including the interpreter.” (9.70)

Religion or Spiritual Belief as Culture

Volumes have been written about how religion and spiritual beliefs can be fundamental in shaping cultural identity. Understanding religious traditions and belief structures is therefore important to identifying and understanding cultural differences (Cohen, 2011). This can help bring understanding about a defendant’s culture and provide context for how he or she perceives the world. Although the examiners in this study provided little detail concerning specifics about religion, they did contrast defendant beliefs with definitions of mental illness. They used the consideration of a defendant’s religious beliefs as a way to rebuff or clarify a mental health diagnosis. Although looking at a defendant’s religious or spiritual beliefs through the lens of diagnosis primarily shows the importance that culture can have on the diagnostic process

(discussed later), to consider religious or spiritual beliefs in this manner the examiners needed to consider them as a means to define the defendant's culture first. Diagnosis is dependent on observable behavior, and much of behavior is guided by culture (Donald, 2002).

"It's a culturally related religious belief, or mental illness, and then you kind of have to tease apart which one it is. But I mean someone's specific religious beliefs when not rising to the level of delusional ideation are not going to be able to be what interferes with competency... or something to that effect" (1.71–1.72).

"But the point is... in that culture, there is inclusion of a lot more of spirituality and spiritualism than in our dominant culture... may sound crazy or schizophrenic or out of touch with reality in some way is part of everyday life to this person though" (8.20).

One examiner discussed experiences with trying to identify cultural backgrounds of defendants and found that religion was one of the easier questions for them to answer.

"Once I get into the evaluation, in my interview I ask about cultural or religious beliefs or practices, that kind of question, just to get a flavor for that type of thing. Typically, people are able to answer the religion part." (6.35–6.36)

While another examiner recognized that presumptions that what a religious group is assumed to believe and act like could potentially be misleading and have an impact on how a defendant might be perceived.

"Recently I saw a Rohingya, that is a population of Muslims in Burma who have been persecuted by the Buddhists. It's not what you typically expect from Buddhists, but there is actual violence taking place and a lot of discrimination." (9.75–9.76)

Social Class, and Education as Culture

Social status and education were seen as important in the context of considering cross-cultural experiences only when the examiners made specific assumptions about a defendant. One of the assumptions was that defendants who received more education were better equipped to navigate other cultural norms, especially when pertaining to a different legal system. The other assumption was that coming from a less formally stratified society would make a defendant better equipped to acclimate to the dominant American society. Below are examples of how examiners considered social class and/or education in their definition of culture.

“I guess just the knowledge that the person comes from a stratified society. What is their experience of that; how is that influencing their experience now, can they even acclimate here?” It was probably much more the case in the late 60’s when I lived there than now, because things have gotten more westernized and class distinctions are breaking down. But they still exist on a much more palpable level than we have in our own country. Where our class system is just less formal” (3.95–3.98).

“As of one of the most difficult is the illiterate and uneducated defendant. Education is much more than literacy. It is teaching abstractions, concepts, and ways of thinking. People without formal education sometimes have concepts about law, how law proceeds and how court proceeds and sometimes they are able to acquire them” (9.60–9.62).

Gender, Age, and Generation as Culture

Although spoken about less frequently, gender, age, and generation were the other demographic identifiers that the examiners in this study referred to when trying to define culture. Although gender, age, or generation were a specific focus for a few of the examiners, they were always considered within the context of country of origin, or race or ethnicity, and not as stand-

alone definitions of culture. Here are a few examples of how these features presented in the interviews:

“I was working with a female supervisor and we were working with a man from, I can’t remember where in Africa, but it was a very masculine tribe and he was very upset over the fact that I and my supervisor were both women and were conducting the evaluation and he refused on multiple occasions to have us actual conduct the evaluation” (1.42).

“And so I had the interpreter who was then extremely helpful in helping me understand what part of this was because this person was having mental problems and what part was just something that everybody around this age (from Cambodia) went through” (3.84).

“I think that its African American males that I seem to be having the most difficulty working with recently. I worked with a couple of African American females and they were both good to go and super competent and there was no problem. So, I’d say, yeah, the males are harder for me.” (4.15–4.16)

“Most of the Vietnamese interpreters were Vietnamese who have come to the U.S. before 1975, so they were people who were of people of power and wealth in south Vietnam prior to the end of the war. Many of the defendants came after the war and they were politically and culturally often opposed to the people who were their interpreters, so there was a lot of distrust there.” (9.72–9.73)

Enculturation and Acculturation

Although the examiners primarily discussed culture in terms of demographic identifiers, the majority also considered how issues around enculturation and acculturation might also impact a defendant’s capacity to understand the American justice system as it pertains to competency to stand trial. Kirshner and Meng (2012) defined enculturation and acculturation as

the processes in which newcomers participate in the practices of another culture. In relation to each other, enculturation is the process by which a person is engrained into their own culture, whereas acculturation refers to the immigration or adoption of a culture that was not originally their own resulting in a change to the cultural identity of the person. It was not always clear if the examiners were aware that they were referring to enculturation or acculturation as ways to help define culture for their defendants, but they commonly utilized many these concepts in their discussion. The following quotes were selected as the primary examples of how the examiners considered acculturation and enculturation in their evaluations.

“It just occurred to me that it’s pretty rare that we deal with someone who is just off the boat, ok. And people who have backgrounds in different cultures have varying degrees of experience with our culture, so what they are is they are not exclusively where they came from, they’re not exclusively US, but you find an interaction between those two, and that’s something, that in most folks, is going to be unique to that individual. A lot of that is going to be informed by how people vary, and how acculturated they are.” (3.43–3.46)

“Maybe there really is a Jinni. You know and it’s so culturally accepted there, but here its like oh you’re psychotic... you know it can get really, really, really, hard to tease something out that is so engrained in another culture that is not accepted here and seems psychotic to us. But, I’d say that thing for the most part you don’t come across things that are that severe, it’s more just again, kind of a language barrier that is happening, or they just moved over here so they’re learning and aren’t familiar with our system.” (4.31–4.32)

“It’s what they are exposed to here, because it’s this culture for which they are being tried. It’s that which sets the parameters about their understanding to determine if they can participate in the proceedings.” (5.76)

“She had been from an African country but had been in the US for over 20 years. So, she definitely had some past experiences, and had some developmentally cultural norms in place. But had been in the states for a number of years and had assimilated to a certain extent.” (6.55–6.56)

“One thing that is interesting, and kind of a side is that a lot of times I’ll get an interpreter case, and it’s just a misunderstanding where the people went to high school in the U.S. and have been here for like 20+ years and so at that point I don’t know if at that point the cultural differences are as great as necessarily in other cases.” (7.35)

“There are those who come from cultures whose only experience with the justice system may be of a very different sort. If your experience is one of Church courts, for example, then your perspective may be very different of what to expect and what the standards are and so on.” (9.86)

Systemic Constraints

The forensic examiners interviewed in this study acknowledged to varying degrees that they experienced external constraints placed on them when consideration of culture was part of their evaluation of a defendant’s competency to stand trial. These constraints comprised the theoretical category Systemic Constraints, which was the second most coded theoretical code. The systemic constraints placed limits on the examiners ability to address cultural differences due to restrictions tied to how and if the court considered culture as a variable in a specific case, to what degree the criminal justice system accepted consideration of culture by examiners in general, and any resulting limitations placed on the allocation of appropriate resources for examiners to account for cultural factors. When asked what examiners did when considering the

culture of a defendant, one examiner quipped, *“I utilize what limited resources are available”* (7.27).

Many all of the systemic constraints identified by the examiners originated from court processes and were centered around issues including: time pressure to get assessments and reports done, limited consideration by the system as to how culture could impact an evaluation and the difficulties involved in identifying the impact, and legal challenges over how defendant competency was defined and considered. While working as part of the criminal justice system, the constraints placed on examiners also resulted in their feeling varying degrees of limitation in their own competency to assess multicultural defendants.

The most prolific category identified by the examiners was titled Appropriateness of Tools. The term *‘tools’* used in this section was defined as those resources that, for one reason or another, examiners identified as lacking in addressing a defendant’s competency to stand trial when they considered culture as a complicating variable. Appropriateness of Tools was primarily comprised of three parts: limitations and appropriateness of assessment instruments available for use with non-normed populations in forensic settings, multicultural training for forensic examiners, and concerns about the quality of court appointed interpreters.

Of the categorical codes that emerged within the Systemic Constraints theoretical code, perhaps the most prominent and emphatic concern that examiners expressed involved a lack of clearly defined best practices as how to address cultural differences in competency to stand trial evaluations. Best practices generally rely on those practices that are evidence-based. Within clinical applications evidence-based practices have involved “the integration of the best available research with clinical expertise in the context of patient characteristics, culture, and preferences” (APA, 2006, p. 280).

The APA guidelines (2013) were explicit in stating the obligation of forensic examiners was to consider how their own culture and that of the defendants might impact the evaluation process; as well as the importance of recognizing examiners' boundaries of expertise, including the need to refer or obtain training, experience, consultation, or supervision (Guideline, 2.07). However, the lack of multicultural research in forensic psychology, and the poor manner in which culture has been considered in forensic evaluations, has run afoul of these ethical obligations. However, the blame does not rest entirely on the evaluator. On one hand the practice of clinical psychology has been telling examiners for decades that they must consider culture, while on the other the criminal justice system has largely ignored cross-cultural differences as an important variable for consideration. This conflict between the two systems has been largely responsible for the lack of development of a best practice, which was found in this study to be a significant source of frustration for the forensic examiners.

Time Constraints

Constraints on time and feeling pressured to complete assessments and reports were among the more common concerns by the examiners. Some of the statements even included specific reference to time limit requirements set by case law and legislation, indicating a legal complication and not just one of policy and practice.

"There was one time, we spent about three weeks waiting on a Bengali interpreter. At this point we are way past the seven-day requirement from the court." (1.14–1.15)

"I don't address culture with everyone, only if it comes up. There isn't time and if it's not a factor, then it would be an unnecessary step." (1.76)

"It's just that people get pushed through and there isn't time to take everyone as an individual and look at them." (2.95)

“I mean it’s horrible and hard to tease it out, but it’s like it comes down mostly, you do research on the internet, you talk to all your colleagues and bounce a million ideas, you basically write two reports, which takes twice as long.” (4.39)

“I feel time pressured for the reports, but I don't necessarily feel time pressured during the interview.” (4.92)

“It can be time consuming, so you do what you can. Sometimes there will be a group of that go out and do outpatient evals altogether, so in those times I have two-hour slots where I have to get everything done and then prepare for my next case. So, in those cases time constraints can be a little trying.” (6.40–6.42)

“We are under a certain amount of time pressure to have the report completed.” (7.13)

System Ignorance and Limits of Information

Trepidation related to how the system considers culture was voiced by over half of the examiners interviewed in this study. All of these concerns reflected areas in which the criminal justice system made general assumptions about the capacities and behavior of all defendants regardless of cultural background. The system has been able to impose limitations on how, and to what degree the evaluation of cultural differences could be considered either through an unwillingness to consider it or an ignorance of the issue in the first place. This has led to varying inconsistencies as to how defendants are treated by the criminal justice system, including a potential risk of deportation in some cases. As this code was a result of examiners considering how the system impacts multicultural defendants, it is directly related to the Defining Culture theoretical code discussed previously, as well the lack of best practice category code discussed at later in this section.

“I think it is just so important that we as examiners are really considering that piece, the issue of culture, because I do think that it gets overlooked at so many other steps in the legal process.

Through no one’s fault necessarily.” (2.94–.96)

“I don't have a lot of information on the person. So, it’s often as I walk in the door that I find out, so.” (6.21)

“So, they (multicultural defendants) could be wrongfully sent to hospital for treatment when they shouldn’t be treated, and it could also I suppose, conversely be used to criminalize their behavior at some level. I don't think I’ve seen a lot of that stuff, mostly it’s the other way and the question is do they have a mental illness or not.” (5.13)

“There was a minority individual in which his competency was called into question and he was already in jail, but the jail personal, they directed me to him because they said this guy’s kind of psychotic, even though that didn't play a part in his trial, he was tried as is. His competency never came up, it was still in question.” (8.33)

“A defendant has the right to assistance from their consulate and in some jurisdictions, they are taking that seriously enough that it’s rather like a Miranda warning, that they have to be certain that it has been adequately communicated and that doesn't always happen. Certain convictions, most convictions, can make someone vulnerable to deportation if they don't have full citizenship, and may also jeopardize their families in various ways. Part of competency is in understanding the possible consequences of conviction, not just a jail sentence, but in terms of those sorts of legal consequences and I don't think that is universally incorporated into immigrant competency evaluations.” (9.96–9.98)

Among the issues raised, one examiner also specifically noted a concern of inconsistent practices on both a macro scale involving different jurisdictions and state laws, and micro scale

involving differences in how private practice approaches competency evaluations from the state health services, and even differences between examiners and court rooms.

“Personally I’ve run up against this a number of different times in court and the issue has included a discrepancy between Washington state law and Oregon state law as well and I don’t know what other states, versus the Federal decision having to with competency, the Dusky standard” (9.66).

“That’s a luxury of private practice in that I can turn away a case that I can’t do and fairly often I will get cultural consultation” (9.103).

“I was somewhat shocked when I went to a workshop when it turned out some of the people are prohibited from giving their own opinion about competency and others said they were required” (9.128).

Legal Challenges

Strongly related to system ignorance and limits of information, the examiners also identified legal challenges as a primary problem with trying to address multicultural differences. This appeared in the interviews as a noticeable disconnect between legal requirements and what the examiners described as the reality of how the system functions. How the law defines specific processes related to competency to stand trial, while ignoring others (as detailed in the Defining Culture theoretical code) including what one examiner referred to as the *low bar of competency* and the resulting ramifications of how competency is considered, have resulted in reinforcing many of the other systemic constraints noted in this section. From what many of the examiners said in their interviews, legal challenges have impacted their own feelings about multicultural evaluations by contributing and confounding how they may feel about the importance of culture

as a variable in light of legal application. In other words, many examiners felt that if the law didn't care, why should they spend the time and energy.

"I think it depends. I mean, I think it's very rare that I would go into an evaluation assuming that it (culture) doesn't play a role, but if there is nothing that comes up in the evaluation that is specific, seems to specifically effect competency, or seems to specifically effect the ability to understand what is going on and communicate appropriately with their attorney and everything like that, then it's not considered as much." (1.28)

"In all honesty, competency is such a low bar it takes very little, a basic factual and rational understanding for the client, and that's about it... well the ability to assist, but... I don't know. It's just so low. The low bar can preclude the cultural difference, so long as we can show the factual and rational ability." (1.37–1.38)

"In general, if it's (culture's) not in tandem with a mental illness then it has nothing to do with competency. I mean it's because that's the standard, it has to be due to mental disease or defect." (1.67)

"You certainly have to take into account their performance, vis-à-vis, the Dusky standard, criteria for diagnostic criteria under DSM, but if this is a situation in which base rates and prevalence rates from where they come from would be higher than a regular population, than this has to be taken account." (3.14–3.16)

"It seems like that we capture some of it, but some of it we make assumptions. Again, you don't know what you don't know. And sometimes you assume you know things that you don't. I mean the Dusky Standard will still be the Dusky Standard." (3.33–3.36)

"I think the competency piece requires a certain level of actual knowledge that someone from a different culture or country, you know, they may not have the base knowledge of the judicial

process and it might take a little more time to go over or explain, but are they are able to learn that information, if that makes sense.” (7.50)

“Competence to stand trial has been widely recognized as relevant to the circumstances of the trial because it has to with the individual being able to understand what they individually are accused of, what the possible consequences are, and what the nature of the evidence and how they can participate in their own defense So competency cannot be regarded as an absolute. It certainly is theoretically conceivable that someone could be competent to stand trial for simple assault, but not for identity theft, or some more complex type of charge. They may be able to comprehend what it is to be charged with simple assault, but not what it is to be charged with identity theft. In that context and from that perspective it is even theoretically possible to consider that someone could be competent or not competent to stand trial depending upon the cultural and linguistic competencies of the judge, prosecutor, and defense attorney.” (9.53–9.57)

“What I came to realize is that from the most part the U.S. has a written justice system rather than an oral justice system, because we have a theory of trials, but more than 90% of cases are settled with plea bargains and the same is pretty true for civil trials, that most are settled out of court. So, we have maintained the fiction of an oral trial, and we focus our competency evaluations on the fiction of an oral trial, when the reality of the system is very different.” (9.88–9.89)

Examiner Limitations

The forensic examiners identified instances in which they experienced personal and professional conflicts when faced with addressing culture in their evaluations of competency to stand trial. Examiners noted that their training in graduate school, which emphasized the importance of considering culture in clinical work, often did not match the focus of their work in forensic settings. Some of the examiners expressed personal dissonance when they tried to consider how and when they felt they needed to address cultural differences. They also

questioned their own competency to do so in the face of the reality of the limitations as part of the criminal justice system.

“Besides, I don't know, maybe I'm just a bit curious but I like to kind of know about the culture before I go in, that way if there are any concerns, I can red flag as concerns related to culture before going in, rather than having to come back and try again if there is something I'm questioning. I try to do background work on all of my clients before going in, but that's just a little bit more, and not always possible.” (1.54–1.55)

“I think it's extremely important for us to stop and look at that as well as to provide information to these treatment teams who see these individuals and offer them culturally appropriate treatment, which might need to be dramatically different for someone from a different culture than someone who was from the U.S. But there just isn't time.” (2.69)

“Usually the case surprises me. There almost is no real way to prepare for that other than kind of like practicing like you your empathy or empathetic responses and doing the ‘I haven't been where you've been through, but I do hear that this is a concern of yours and that seems to be a common concern.’ So, parroting that back. Using a lot of like the weird therapy techniques, I guess.” (4.58–4.59)

“It (addressing culture) probably should be every case. But when I'm really thinking about it, if I had to be honest, I would have to say I only do it case-to-case.” (7.41–7.42)

“I think that a lot of self-reflection that occurs in graduate school, so your training as well, and being able to look at, as we all have done this, where we grew up as having been part of our own psychology.” (7.60)

“I'm not specialized in culture. I consider myself to be a cultural generalist and believe that is the proper role of a psychologist. Our area of study is human behavior, and human emotions and

cognition, and to understand that well, we need to understand it in its full variety.” (9.144–9.145)

Appropriateness of Tools: Multicultural Training

Many of the examiners acknowledged having attended some form of multicultural training since working in their current position. However, while some of the examiners expressed concern with regard to the quality and relevancy to their work, others saw their training primarily as something necessary to fill licensure requirements and had less concern if their training had specific applicability to forensic psychology. The following are statements examiners made regarding access to and appropriateness of multicultural training:

“I think the instructor talks about a Vietnamese woman, there was this thing in the, I can’t remember if it was the appeals court or the supreme court, but the evaluation was thrown out because it was insufficiently sensitive to the cultural norms and I forget what the language was, but we were sort of directed to, you know, your evaluation has to adhere to the profession’s accepted standards for a cultural sensitivity. Ummm... what are those? He responded beats me” (3.108–3.109).

“I have a license in two states, and in my other state the license requirements are that I have at least 3 hours of cultural competency training each year. So, if I miss the yearly in-house presentation on cultural competence, then, I don’t know, I’ll try to do training online or find another local CEU that is presenting on that if possible” (6.47).

“Well, mostly life experience. I took a course on multicultural sensitivity though” (8.10–8.11).

Appropriateness of Tools: Assessment Tools

Although some of the examiners acknowledged challenges with using assessment tools not designed or validated with multicultural defendants, the majority did not specifically talk

about this issue. This may be a bit surprising since although the literature regarding the discussion on multicultural issues in forensic psychology is limited, the majority tends to center around, or at least make significant reference to the appropriateness of assessment measures with multicultural defendants (Boehnlein, et al., 2005; Kirmayer, Rousseau, and Lashley, 2007; Pirelli et al., 2011).

“There isn’t really a lot out there to help with cultural differences in competency evaluations, especially as far as evaluation measures. I was trying to think of the different ones out there, most of them are pretty primitive and the ones that are more common are not designed for cultural differences. I’m trying to think of one that does a pretty good job, with regard to rational and factual understanding, at least. But there isn’t a good multicultural component. You just overlay the individual’s experience over what already exists. There really isn’t much out there, you just have to kind of do it on your own.” (8.37–8.40)

“I’ll also prepare with respect to what tests or instruments I may need and that will depend on the individual, the language, the degree of their English facility, the referral questions and possible diagnosis.” (9.107)

Appropriateness of Tools: Limitations of Interpreters

Utilization of interpreters was an important issue for the examiners. All of the interviews included multiple statements pertaining to interactions with them. Some of the statements were positive and reflected a sense that interpreters can be an invaluable source of information about a culture, as well as providing language translation as in these statements:

“Whether it’s culturally appropriate. It’s just nice to have the interpreter there to say, it’s legit, like if he said this back where we’re from, it would not sound crazy and we would get him a spiritual healer right away and we would knock this out. Whereas here, we would keep him in

the hospital forever and give him lots of drugs. But yeah, I think interpreters are very valuable if they're good. Detrimental if they're not." (4.127)

"I had one translator recently where the guy was deaf, so I had an ASL interpreter. She was very helpful, very professional" (6.62).

"Then prepping the interpreter... When it's a forensic evaluation that is usually pretty easy since they are professional interpreters" (9.113).

Although there was a general consensus among the examiners that the use of interpreters was unavoidable and generally helpful, the majority of the discussion revolved around recounting instances in which the interpreter inhibited or in some way negatively impacted an evaluation. At some point during their interview all of the examiners mentioned interpretation as problematic. This indicated that difficulties with interpreters were an important and frequently encountered issue. Anytime an interpreter is used in a psychological evaluation the evaluation is impacted (Maddux, 2010). Problems with interpreter language proficiency or a lack of understanding what their role is in the interview can lead to omissions, editorialized translation, or just simply wrong information (Maddux, 2010). The following were statements made by the examiners with regard to difficulties they have experienced with the use of interpreters:

"At this point we are way past the seven-day requirement from the court, but there is only one interpreter who speaks Bengali on like the entire west coast, so it was really frustrating. The interview was over the phone with the interpreter and I would ask questions that were not yes or no questions, and after the interpreter, this guy would have spoken for 10 or 15 minutes, the response would be with a yes or no answer." (1.17–1.18)

"I made the mistake of asking about current events and the guy had started talking about some of the events and had alluded to Russian oppressors and the Russian interpreter got so upset that

he told the guy that he wouldn't be talking anymore and he could find another interpreter.

Sometimes interpreters have been helpful with bringing understanding, but they can get in the way.” (1.23–1.24)

“And of course, just having another person in the room can impact the whole dynamic, but its kind of hard to say how exactly it impacts it, but it does have an impact.” (2.64)

“And interpreters, just in general are horrible. Getting interpreters to just get here is the first part that is horrible and we frequently don't have qualified interpreters, they frequently have to use their smart phones to look up words that even I would know, that I remember from first year Spanish, like apple, what is that, how do you not know apple. And I'm like oh my God! They often don't have familiarity with the words we use in court and so I mean that's a big barrier we have to cross sometimes.” (4.10–4.12)

“The use of an interpreter compounds our difficulty, because you are not talking directly to the patient, you're talking to an interpreter who may or may not be giving you what the person is actually telling you. By definition they're interpreting. They're not really translating because there are very few of interpreters that can actually translate word for word what someone says in a foreign language. Not only do we need the correct interpreter, but the competent interpreter.” (5.28 and 5.33)

“I tried to probe through the interpreter about what was going on in his home country and the interpreter refused to relay that information. She called it propaganda and interjected her personal beliefs into the interview and really disrupted the process.” (6.66–6.67)

“So having an understanding of being able to do research, because often you are unable to consult with people from a specific culture is very important... and with that being able to find someone from a specific country in Africa that is familiar with the laws, and psychology, and

that is pretty difficult. So a lot of times rather consultation occurs in a broader sense in like what kind of considerations are necessary to make and are you making its almost like a checklist.”

(7.12–7.15)

“So, the Burmese interpreter for my client came in her Buddhist robes and it just really felt like this is not appropriate, but what can I do.” (9.77)

One examiner noted that many interpreters are aware of some of the problems that can arise in forensic evaluations but are limited by the rules around their use by the criminal justice system.

“U.S. courts use certified legal interpreters who are trained not to interrupt the proceedings or attempt to clarify when they notice if there are misunderstandings going on.” (9.48)

Lack of Best Practice

Of the systemic constraints examiners identified perhaps the most comprehensive was an expressed confusion, frustration, and annoyance over a lack of a clear best practice with how and when to include culture in their assessment and how to report it to the court. The lack of a best practice for considering culture in competency to stand trial evaluations was in many ways the driving factor in the theoretical category of Systemic Constraints. The lack of a best practice is derived from the systemic constraints themselves that stem from a history of ignoring different cultures that may act as a variable to how the law is perceived and functions. Tamatea (2016) noted that “forensic and correctional psychology derive from a cultural basis that privileges certain types of knowledge and promotes certain forms of practice that are incommensurate with the outlook and realities of some offenders and their communities” (p. 564). This creates a conundrum for the criminal justice system, for it were to acknowledge that the application of the law is not as objective as it was promised to be, and is not equally applied to everyone,

fundamental beliefs embedded within the system would be undermined and we would be forced to acknowledge that the system had created a license for bias. Therefore, the criminal justice system effectively has not uniformly decided how or if it is going to address the growing challenge of multiculturalism such as that presented in the *Sisouvanh* and *Ortiz-Abrego* cases.

This issue also directly ties into the theoretical category Defining Culture discussed above. By suppressing culture through the use of systemic constraints a clear legal definition to guide examiners has been evaded by the criminal justice system. In essence examiners have been placed in the dubious position of trying to account for an undefined legal variable that is likely to be important in clarifying defendant diagnosis and identifying capacity for competency to stand trial, while at the same time having to find a way to work within the system's constraints. The complexities and confusion that has arisen from this situation can be heard throughout the interviews.

"And so, it's after I've met with them and I'm trying to make sense of the data that I've collected that I'll do that. I guess it certainly make sense to do it proactively as well, it just that is not usually how I do it." (2.32)

"Apparently this is something that is so inchoate that we really need to pay a lot attention to it, but how we actually go about doing it is still a work in progress so... it's good that someone is doing research on it." (3.110)

"It's a stepwise thing that you may never get there but am I given enough information to cause me to believe that I'm making the right decision or the right opinion. Have you considered, what did you consider, how did you consider it? There's no specific way to do it". (5.51–5.52)

"For me it's more case by case. I guess it's kind of hard to pinpoint." (6.32–6.33)

“For me it’s (culture’s) a piece, and my curiosity is, where are a lot of other examiners at with this.” (7.73)

“I like the framework... I can’t remember what it was called. I don’t follow a specific protocol, but I have been influenced by a woman from Alaska who did a presentation that I saw. I like what she did there, I pay attention to those various issues, but I don’t use a specific protocol. I’ve toyed with putting one together to put in my intake paperwork. I just haven’t gotten around to it.” (8.65–8.67)

Reliance on Others

Reliance On Others coded specific issues that examiners discussed regarding consultation with others who have had direct contact with a specific defendant or the defendant’s culture. *Reliance On Others* emerged alongside and overlapped with *Systemic Constraints*. The theoretical code *Reliance on Others* intersects with the *Systemic Constraints* code in that it includes those who examiners identified as having obtained information from regarding a defendant’s culture, but who may also be part of the criminal justice system. However, it is distinct from *Systemic Constraints* as it also considered the availability and use of professionals, consultants, and relevant research that were not bound by the criminal justice system.

The examiners noted that they often needed to rely on others for consultation to help inform their opinion on how cultural differences may have impacted a defendant’s competency to stand trial. Examiners stated that they frequently relied on information from other examiners, interpreters, attorneys, ward staff and treatment teams, as well as informants and others who were considered to be cultural authorities. Additionally, several examiners discussed Internet research done on a specific culture. Interestingly, examiners did not distinguish the usefulness or

validity of Internet research from consultation with others, often mentioning the two in the same sentence.

Lastly, *Reliance On Others* was also coded when examiners noted that they used outside information in order to obtain a frame of reference. While consultation or research was usually spoken of with regard to confirming their opinion on a defendant's competency, on several occasions the examiners specifically referenced relying on others to help establish a frame of reference from which to better understand the defendant's perspective or worldview. This emerged as an important aspect of *Reliance On Others* as it suggests that examiners use consultation and research in different ways depending on factors of the case, including the impact of systemic constraints, and their views on the importance of culture at different stages of the evaluation process.

As with other aspects related to cross-cultural challenges in forensic evaluations, little guidance currently exists with regard to how consultation should occur when cross-cultural challenges arise during the evaluation of defendants (Aggarwal, 2012; Kirmayer et al., 2014). One examiner noted, "*Invariably you always have to rely on someone else in these evaluations*" (5.68). In many ways this quote captured the primary concept in this thematic code.

Upon reviewing the data of examiner's seeking consultation with others, two important concepts emerged. First, examiners described being at a loss as to how to proceed with a defendant and sought guidance from others, most often peers who often did not have any clearer idea as to how to proceed. Secondly, the examiners often sought consultation as a way to confirm their opinion regarding competency of the defendant to stand trial. While these concepts were seen to varying degrees across the *Reliance On Others* conceptual categories, they were most apparent when examiners discussed peer consultation. Examples of how examiners discussed

their use of consultation and reliance on others are listed below. The quotes are separated into their conceptual codes for easier reference for the reader. How examiners use consultation is an important concept within the grounded theory and it will be revisited again during the discussion of the primary thematic code: *Culture as a Nuisance Variable*, discussed at the end of this chapter.

Review of Prior Evaluations, and Relying on Other Examiners

“I usually use peer consultation, regarding here’s what I’m thinking, here’s how they’re presenting, should I do a literature review to explain where I’m coming from... things like that.”
(2.21)

“So, I basically do a lot of consulting with other examiners and just kind of sit around and talk it all out and you know bounce six million ideas off until I feel comfortable with whatever my conclusion is. But yah, that’s really the only way I know how.” (4.53)

“There is a considerable amount of consultation that occurs where I work, and the advantage of having a cadre of examiners who can talk and discuss and process cases.” (5.57)

“It’s very important. Because, um, like we have a peer consultation group each week and we were talking about someone else who had come from a different African country and had little to no exposure to our legal system so the examiner had to really understand where that person was coming from in order for her to really wrap her head around the person’s capacity to understand our proceedings and the process and be able to work with her attorney, so it’s very important.”
(6.10–6.12)

“As an inpatient examiner, typically if they’re not a fifteen-day evaluation, which I haven’t really had any, there usually is a previous evaluation that has been completed and so that helps me quite a bit.” (7.33)

Relying on Attorneys

“It does sometimes just depend on how willing an attorney is to put in the time with their client” (1.36).

“I might want the attorney to be present more so in those cases than in other cases so that way I can see how their interaction is” (2.70).

“It was fantastic! I really got an accurate picture I think, and the defendant’s attorney also felt that we were getting an accurate picture as well about what was being communicated” (5.63).

Relying on Interpreters

Interpreters appear in several of the thematic codes, as they were the most frequent form of consultation in cross-cultural forensic evaluations. However, the codes associated with them are unique within each thematic category. While language translation is usually the primary reason for the use of an interpreter, it is not the only aspect of importance. Several factors can affect a forensic evaluation, including the interviewee, the forensic examiner, and the interpreter (Maddux, 2010). Aside from language translation, most of the examiners interviewed in this study also stated that they expected translators to have knowledge and competency with the defendant’s culture as well as proficiency with the language. “The interpreter’s ability to understand not only the evaluatee’s statements but also the culturally unique meanings attached to those statements can be invaluable in a forensic assessment” (Wagoner, 2017).

“I definitely find myself sometimes needing to ask the interpreters about something that might be culturally specific, because there are definitely some times when they have responded to a question in which they say something that I’m not sure if it sounds delusional or is this something that is just culturally specific or religious” (1.10).

“Sometimes interpreters have been helpful with bringing cultural understanding, but they can get in the way.” (1.24)

“And so, I had the interpreter. Who was then extremely helpful in helping me understand what part of this was because this person was having mental problems and what part was just something that everybody around this age (from Cambodia) went through.” (3.84)

“So in that way the interpreter is insanely important that they are well trained and kind of have the education or background of the same community for where the person was raised. So not just language skills, but cultural skills, definitely.” (4.125)

“The use of an interpreter compounds our difficulty, because you are not talking directly to the patient, you’re talking to an interpreter who may or may not be giving you what the person is actually telling you. So, you’re relying to a certain extent, on a third party to tell you what this person is like.” (5.28–5.29)

Relying on Ward Staff and Treatment Teams

“Or sometimes the ward staff will notify you that they may have some indications that something might be a little different.” (1.53)

“I think it will be probably more consultation with their treatment team and finding what the best approach is for this person.” (2.71)

“But there are times when I’ll have an opinion and I’ll feel solid about it, and I’ll go and read the chart notes and then I’m like God damn it, ok... maybe I do need to rethink this...” (4.91)

Use of Informants and Cultural Authority

“But if you’re not sure, then you want to go for consultation, and even possibly referral if necessary, with someone more experienced, or part of that culture for example, to talk about whether those facts are part of the culture or if they are outside the cultural mainstream.” (5.20)

“If we expand the idea of culture to include not just language and ethnicity, but also for example someone’s having a speech and hearing disorder, because now we’re talking about a subculture within our culture where that’s a very critical thing. So, the case I had, and I cannot remember what the person was charged with, but we had two interpreters, one who was assigned language as an ASL language translator, and then had a cultural interpreter, who then interpreted the sign language person.” (5.61–5.62)

“So, a lot of times rather consultation occurs in a broader sense in like what kind of considerations are necessary to make and are you making its almost like a checklist, when your consulting with someone about cultural issues typically it’s not specific to their culture, but more what are kinds of things are you considering.” (7.15–7.16)

“That’s a luxury of private practice in that I can turn away a case that I can’t do and fairly often I will get cultural consultation. For instance I have had psychologists or neuropsychologists from Turkey, Iran, Algeria, and a number of other places that I’ve either consulted or had go with me for seeing the clients, a student from Vietnam, I will make use of cultural resources, where I have them available and every once in a while I’ll consult with an Anthropologist if I feel I need that extra help.” (9.103–9.104)

“... often around the end of the linguistic, immigration, and acculturation part of the interview, I will ask about permission to speak with an informant, typically a family member, and get that permission.” (9.120)

Internet Research

“I consult with my peers first and then I’ll do an Internet search to find out a little more about the culture.” (6.18).

“So being able to do as much research as I can ahead of time, like the internet.” (7.28)

“I also try to research and screen literacy in their native language or languages and fortunately that’s getting to be easy to do because there is a linguistics website that covers a huge number of the world’s languages and has sample text in each language in the original script as well as transcribed in the Latin script, that is to say English, which allows you to track their oral reading and track their comprehension.” (9.119)

Frame of Reference

“It helped ground me in what happened and gave me a frame of reference for the experiences that these folks went through. Something entirely foreign to me. You don’t get the same thing from watching it in a movie” (3.88–3.89).

“She really didn’t have any concept of fair trial or looking at evidence so had to wrap my head around what her background was, and then had to understand her capacity to understand what she was going through” (6.26).

“If I can say that it’s a background or culture that I’m already familiar with, then I’ll begin my background research and I will find out what I can about the person’s origins and look that up and learn what I can about their history, immigration, things that are pertinent, sometimes their legal system” (9.106).

Cultural Impact on Diagnosis

Pirelli, Gottdiener, and Zapf (2011), quoting Stone (1975) noted, “Competency to stand trial evaluations have been regarded as ‘the most significant mental health inquiry pursued in the system of criminal law’” (p. 2) Most mental health inquiries in forensic psychology start with asking if the defendant has a diagnosable mental illness. When establishing a mental health diagnosis, the criminal justice system relies exclusively on the expertise of the examiner and

generally does not dictate to the mental health professional how to proceed with making a diagnosis (Pirelli et al., 2011). During the interviews, the examiners established that diagnosis was a critical aspect of the evaluation for competency to stand trial, and most of them paraphrased or referenced Washington State statute RCW 10.77, which requires an incompetent defendant to have a “mental disease or defect.” Additionally, several of the examiners also referenced the Dusky Standard established in *Dusky v. the United States* (1960), which found:

It is not enough for the district judge to find that ‘the defendant is oriented to time and place and has some recollection of events’, but that the test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as factual understanding of the proceedings against him. (p. 402)

By referencing statute or case law, the examiners appeared to be qualifying the professional liberty granted to them by the criminal justice system to make a diagnosis. With that independence established, and after having acknowledged the critical aspect of diagnosis in the competency evaluation, many of the examiners also felt confident to discuss the impact culture may have on a diagnostic decision.

Coded as *Cultural Impact on Diagnosis*, this theoretical code is most related to *Defining Culture*, *Systemic Constraints*, and *Reliance On Others*. It takes into consideration what the examiners said about where they felt culture might matter most within the legal consideration of a defendant’s competency. Determination of the impact a defendant’s culture has on mental health presentation relies heavily on how an examiner considers culture as a factor, what limitations are placed on the evaluation by the criminal justice system (despite an supposed independence to make a diagnosis), and examiner access to critical information and appropriate

consultation about the defendant's culture. At the heart of the theoretical code is the consideration by examiners that culture impacts behavioral presentation; and it is through interpretation of behavior that diagnosis is usually made.

Clinical literature has long recognized that culture has a significant impact on making a determination of a mental health diagnosis. Cultural context has been shown to shape mental health presentation, and cultural misunderstanding between patient and clinician, as well as clinician biases have led to both misdiagnosis and prevented clients from receiving appropriate care (Alarcón, 2009; Sonethavilay, Miyabayashi, Komori, Onimaru, & Washio, 2011). Noted in the United States Office of the Surgeon General (OSG) report on mental health, culture, race, and ethnicity (2001), Kleinman (1988) was noted for how he presented that cultures may vary with respect to the meaning they ascribe to illness; as a way of making sense of the subjective experience. In this context, illness referred to culture bound attitudes and beliefs about whether an illness of the body and/or the mind is real or imagined, amount of stigma associated with it within the patient's culture, etiological explanation, and specific characteristics of the individual impacted (OSG, 2001). The examiners in their discussion of how culture can impact diagnosis identified nearly all of these factors and several of the coded instances are quoted here for the reader.

"It's (culture's) absolutely important, it's particularly important in the diagnostic formulation and understanding that individuals from a difficult culture might view mental health symptoms differently, they might express mental health symptoms differently." (2.12)

"But where it really impacts it is in interpreting their symptoms, whether they're genuine symptoms of the mental illness or culturally appropriate expressions, and not pathologizing something that could be normative for somebody. In terms for the outcome in whether or not I'm

saying somebody is competent or not... So that's probably the only thing where I see it really coming into play and impacting the rest of the evaluation.” (2.48–2.51)

“Ultimately we decided that it’s essentially the wrapper. The culture was the wrapper that the pathology came in. What he was talking about was something that was very common in his culture, but the way it affected him was unique to him and was a result of his mental illness. It was something that the other examiner struggled with when he was trying to figure out if he was competent, but ultimately concluded that the phenomenon, well the culture was just the wrapper that his delusions and hallucinations came in. It’s the way the hallucinations made sense.” (3.58–3.61)

“... it was not a significant factor in determining diagnosis, because either they were genuinely presenting symptoms of a psychotic nature/mood instability, or they were not. So it wasn't, it was a rule one-way or the other, basically... I considered all these things that led me to believe that it was not important. If you consider these factors and if you rule out the fact that someone is not presenting with psychotic symptoms that is causing them to do this particular act.” (5.46–5.48)

“It’s extremely important at the diagnostic part, but to a lesser extent, certainly there may be some overlays, because you need to establish if the person can overcome and really understands our court system, or are you pulling in what their experience is from other cultures.” (5.78)

“I think culture requires serious consideration when you’re coming to an opinion especially about a diagnosis whether someone even meets the criteria for them to have a mental illness.” (7.10)

“So, it’s important to take all sorts of cultural belief systems into account when trying to interpret whether someone is competent or if they are psychotic or not.” (8.21)

Emotionality

Emotionality was an important, and in a way unique theoretical code that emerged from the interviews. Although it was not coded as frequently as the other theoretical codes, due to deciding to code only when examiners specifically labeled their emotions in the interviews, it was an ever-present aspect in the interviews. It is important for the reader to know that emotion resonated within the examiners' voices, body language, and facial expressions, and set the tone for many of the open codes. I attempted to capture the emotion of the examiners in the memos associated with each of the codes, which can be found in Appendix D.

Discussing the impact of culture on such a fundamental part of the examiners' work as competency to stand trial sparked an expression of strong emotion at various times with all of the examiners. Given the controversial nature of culture within the context of criminal justice, it was perhaps not surprising that almost all of the emotion was of a cautious or adverse nature, consisting primarily of frustration and annoyance, discomfort, or surprise. Along with the adverse tone of the emotions was what the examiners attributed their emotional responses to. Examiners who tended to speak in more open terms regarding the importance of culture, or at least in a more culturally aware way tended to express their negativity toward the constraints and deficiencies of the criminal justice system to address culture in consideration of competency to stand trial. While other examiners who perhaps identified more as part of the system and advocated more for the legal process tended to express their negative emotions toward the consideration of culture as being a complicated and even unnecessary step at times. Emotion emerged at various times throughout the interviews and accompanied all of the other thematic codes. However, the *Emotionality* code was most influential in the coding of the main thematic

code, of *Culture As A Nuisance*, discussed in the next section. Examples of expressed emotionality are presented here:

“It can make it more challenging or even frustrating to conduct evaluations.” (2.62)

“Sometimes it doesn't have as much to do... it can affect in other ways. Can be confusing and frustrating at times.” (3.77)

“But you can never get there, because you're so up in arms that it's really hard to write the report. It's just irritating.” (4.65)

“I mean there are times where I don't have an opinion and I hate that. I walk out of the room and I go Damn it, and you know I really have to talk to the ward staff and try to tease this out, because I could legitimately go either way.” (4.89)

“So, it was kind of a complicated and frustrating picture.” (6.54)

“I was somewhat shocked when I went to a workshop when it turned out some of the people are prohibited from giving their own opinion about competency and others said they were required.” (9.128)

Culture As a Nuisance

Forensic examiners are expected to advocate on behalf of the legal system while also working within the boundaries of it. This includes acknowledging those issues the criminal justice system has defined as important to an evaluation, which until recently did not include a consideration of a defendant's culture in the evaluation of competency to stand trial, and at the time of this study is arguably still considered as a marginal variable by the system. The examiners in this study demonstrated a varied awareness of the pressure and sometimes precariousness of their role within the criminal justice system when culture enters into the discussion of a defendant's competency to stand trial.

Most forensic psychologists, like those interviewed in this study were educated and trained outside the legal system, usually coming from clinical psychology programs. This means that with rare exception, as with one examiner in this study who changed professions from having been an attorney to then completing a doctorate in psychology, the examiners were not immersed in the legal system at the onset of their careers. Instead they were likely trained to some degree to consider culture as a critical variable in their clinical work, as cultural consideration has long been a key aspect to client conceptualization in clinical psychology practice and education (Mio & Morris, 1990; Barnett & Bivings, 2002; Tseng, Mathews, & Elwyn, 2004; Sue, Zane, Nagayama Hall, & Berger, 2009). This appears to have contributed to a disparity that each examiner attempted to reconcile between their doctoral training and their forensic practice in how much value to place on trying to account for cultural influence in competency evaluations.

In this study the influence of the cultural training that the examiners' received in their clinical education, as well as individual past experiences, self-perception, and conscious and unconscious biases, were revealed when confronted with a discussion about their role in having to consider the importance of culture within the confines of the legal system they work in. When discussing their role as a part of the criminal justice system in light of culture as a factor in their work, the examiners each expressed attitudes and opinions toward cultural factors that ranged dramatically in emotional response at different times during their interview. Examiners attitudes often included attitudes that aligned with identifying as a part of the system of law and diminishing the importance of culture, expressing an uncertainty and confusion as to role of culture within their work, apologizing for the law's shortcomings, and even criticism of a perceived inadequacy in how the system ignores culture.

From the examiners' statements that reflected their thoughts, feelings, and attitudes on consideration of cultural in their evaluations, eighty open codes emerged. Ultimately, these were compiled into nine categorical codes that accounted for the data and formed the theoretical code, *Culture As A Nuisance*. The categorical codes were labeled *Shifting Responsibilities*, *Demeaning Language*, *Assertion of Power*, *Power Perspectives*, *Judging Cultural Values*, *Pathologizing Cultural Values*, *Overidentifying*, *Assumption of Non-Effect*, and *Accommodating Culture*. Each of the categorical codes overlap with at least one of other theoretical codes discussed previously, and taken together, the categorical codes of *Culture As A Nuisance* tie all of the other theoretical codes into the grounded theory. Each categorical code is discussed at the end of this section with examples drawn from the examiners.

Relationship to Microaggression Research

Culture As A Nuisance most closely relates in the literature to the research involving racial microaggressions. Racial microaggressions are defined as intentional or unintentional brief verbal, behavioral, or environmental indignities that communicate hostile, derogatory, or negative racial slights and insults to a target person or group (Nadal et al., 2014). Racial microaggressions involve the constructs of racism, privilege, and oppression that occur inescapably across American culture and include individual and group beliefs, as well as institutional practice (Sue, 2010). Chang, Gnilka, & O'Hara (2014) stated that privilege involves unearned advantages, oppression involves unearned disadvantages, and racism is privilege and oppression based on the social construct of race. Privilege allows access and opportunities that are closed off to others who do not have the same group membership. Conversely, oppression involves restriction of societal equality; it limits or denies access to resources, political processes and representation, and participation in the dominant community (Chang, Gnilka, & O'Hara

2014). On an individual level, microaggressions have been shown to produce mental health problems that include feelings of low self-esteem, humiliation, and dehumanization (Sue, 2010). While microaggressions on a group or system level can create a hostile environment that inhibits social interactions, lower work productivity, and impediments for educational learning (Sue, 2010).

Research involving racial microaggressions has found that a similar phenomenon likely occurs with other marginalized groups as well, including people with disabilities (Keller & Galgay, 2010), women and non-cisgendered male individuals (Sue, 2010), people with non-binary sexual orientations (Nadal, 2013), ethnic minorities (Owen et al., 2014), and people from low socio-economic groups (Locke & Trolan, 2018). While race, ethnicity, gender, sexual orientation, and socioeconomic class can all be contributing constructs within an individual's culture, a search of the current research found no result for any articles that directly applied microaggressions to culture as a whole.

Although microaggression research has been effective at drawing attention to the more subtle forms of prejudice that exists in American society, it is not without criticism. Lilienfeld, (2017) argued, "it (microaggression research) is far too underdeveloped on the conceptual and methodological fronts to warrant real-world application" (p. 138). It is important to note that Lilienfeld was not arguing against the existence of microaggressions per se. Instead he suggested that the research was lacking "connectivity to key domains of psychological science, including psychometrics, social cognition, cognitive- behavioral therapy, behavior genetics, and personality, health, and industrial-organizational psychology" (p. 138). However, it should also be noted that Lilienfeld appears to have utilized a conventional constructionist perspective in his

criticism of the current research, which follows the same tradition that Smith (1999) argued against.

Regardless of whether the current microaggression research conforms to constructivist research ideals, themes akin to what had been observed in those studies were identified in this study. This observed phenomenon was partly instrumental in theorizing an explanation for the interaction of systemic bias, consideration of the challenges brought by cultural differences to that bias, and what examiner reaction has been. Within each of the nine categorical codes that comprise *Culture As A Nuisance*, a spectrum was identified that demonstrated both positive and negative reactions by the examiners to the variables that comprise each category.

Power Perspectives and Assertion of Power

Power Perspectives along with *Assertion of Power* were two of the first and most prolific categorical codes to emerge in this study. As the titles of the categories indicate, these categories involved the identification and application of the power differential that exists in the examiner/defendant dynamic. Due to the way in which the criminal justice system is structured, the examiner is placed in a position of power over the defendant being evaluated. This becomes exacerbated however when the defendant is from a unprivileged group, such as those who are culturally different from the dominate group in the United States.

Power has been defined in many ways depending on the context. However, for purposes of this study power implies the capacity to alter another person's condition by controlling access to resources, having the authority to direct or influence the behavior of others, and/or alter the course of events for someone else (Hays, 2008; Keltner, 2016). As with many groups in a position of power, much of the *Power Perspectives* and *Assertion of Power* codes involved the ways in which examiners perceived their position and then reacted to a multicultural defendant.

In the United States, minority individuals, even those who have newly immigrated, become socialized to be aware of the lines that separate the privileged and those who are not (Hays, 2008). Socialization to the rules and differences for multicultural defendants occurs with each encounter with a social system, including the mental health and criminal justice systems.

Contrary to the socialization rules that impact minority groups, including multicultural defendants, those who are afforded privilege, such as forensic examiners, may not be aware of the rules and differences instituted on multicultural defendants (Hays, 2008). Part of having privilege includes not having to deal with the barriers and rules that significantly impact the unprivileged, oppressed, or minority group member (Fiske, 1993). The examiners in this study varied in how much awareness they had for the differences in power, and how conscious they were in exertion of their power with multicultural defendants. Most frequently examiners made assumptions of who the defendant was, or what they expected multicultural defendants to know. One common statement involved defendants being expected to know “basic” concepts, as in this example:

“Now with that person’s case, she tended to embellish some of her factual knowledge, claiming to not understand some very basic concepts” (6.52).

Conflict with the defendant was another significant theme, often arising out of the examiner failing to identify the power differential in the evaluation, inserting their own opinion based on examples from their life, or failing to recognize cultural differences. Examples of examiner statements with regard to their perspective and assertion of their power are provided here:

“So I suppose in all honesty I think it’s probably the biggest cultural thing that I have seen. More common one actually is, how do I say this, sometimes individuals who are primarily

African American will respond not in a positive way and in a very anti-white people in a position of power kind of way, that because I'm white I can't be judging them, like that and they see that many of the questions we ask as demeaning or coming from a superior position. Or they've told me that it sounds like I'm being superior. The interpretation is that I'm coming from a superior position and I'm not in a position where I can judge them." (1.95–1.97)

"Unless I thought I had a reason to look at their information ahead of time. But I can't think of a case right now that I had a reason to look at it at a time. It's usually afterwards." (2.33–2.34)

"It seems like that we capture some of it, but some of it we make assumptions. Again, you don't know what you don't know. And sometimes you assume you know things that you don't." (3.33–3.35)

"You know is this something that you ask any Black person on the street and they would agree that nope, this is legit, or is the person paranoid. That's where I find it the trickiest to be, where there's a culture gap there. You know crap, I haven't walked in your shoes, I don't know how many of your friends have been arrested, or what you see on the news, or if you take this personally, and to me it sounds like you're being really paranoid but I don't live your life. I don't have those same concerns about those things." (4.46–4.48)

"So that they don't again feel like you're a part of the system and you're a part of the problem, maybe you are actually trying to understand them and actually give a shit rather than some white entitled person who you know. I'm like I'm trying to understand, and I want to, so please try to explain it to me, is really the only way." (4.60–4.61)

"He said several times that he doesn't want to change the way he talks, but you guys don't understand me, but my friends outside understand and I'm not going to change how I speak just for you guys, because we would never be friends outside of here. I'm like yah. I totally get that,

because I'm not understanding. I mean I understand the words and I think I understand the concept, but when I reflect that back, I was apparently way off base." (4.100)

"I feel like it was an individual thing, he was super manic. He has a lot of flight of ideas. I mean I literally wrote down nothing. It was so weird. I just don't know. It was intriguing and a little entertaining." (4.106–4.107)

"Well if there is an issue of culture, it's always a challenge." (5.18)

"It is our culture that they are being judged on its our culture that is deciding if they are competent to understand how to interact with their lawyer so it's not what their culture from their homeland, or what that crime might or might not be, whether their acts might or might not be consider a crime in their country, it's what they are exposed to here, because it's this culture for which they are being tried. It's that which sets the parameters about their understanding to determine if they can participate in the proceedings." (5.74–5.76)

"So she definitely had some past experiences, and had some developmentally cultural norms in place. But she had been in the states for a number of years and had to have assimilated to a certain extent." (6.56–6.57)

"I mean going back to the way that my job is set up as an in-patient examiner; I think it might be realistic to consider culture in every case, maybe" (7.43)

"I think from a western standpoint, things can definitely look like a mental illness. They may seem to have delusions, or all these things but then it may be part of their religion, or part of their kind of world view on how things happen. So being somewhat aware, as best you can, you can't go 100% without living in that person's shoes, but you can have an awareness, I guess." (7.54–7.55)

“I was raised in an ethnically diverse family. There are a number of ethnicities represented in my family and I grew up in an ethnically diverse place. So, I primarily rely on life experience and growing in a family that promoted tolerance and inclusion of all types of ethnicities and cultural identities.” (8.12–8.14)

“Well, there are people I can consult with. I have done that. But like I said I feel like I have a fairly broad exposure to a lot of multicultural things.” (8.45–8.46)

“So, that also has to do with what are one’s expectations for a justice system and being on trial and many parts of the world have justice systems that you may say are a joke.” (9.84)

“On occasion I have seen immigrant professionals, who can get resentful of immigrant clients who have not made an effort to learn English like they did and that kind of judgementalism. I think that’s not terribly common; it does exist.” (9.167)

“So, I just see it as a direct consequence of the science of psychology. I think I had that perspective before I entered psychology, in that I came to develop a value system of humanism and seeing my humanity and world citizenship as taking precedence over my national citizenship and identity.” (9.148)

Shifting Responsibility

Shifting Responsibility was a critical category that helped identify how the examiners approached cross-cultural encounters that they determined to be more challenging than their other evaluations. *Shifting Responsibility* is a response to the attitudes and viewpoints that emerged as a part of the *Power Perspectives* and *Assertion Of Power* categorical codes. It is also connected to the *Reliance On Others* theoretical code. However, unlike the *Reliance On Others* code, *Shifting Responsibility* did not emerge as a way to acknowledge how the roles of the other professionals and individuals involved in the process of competency to stand trial work together.

Instead *Shifting Responsibility* represented the examiners' expressed desires or attempts to reallocate their responsibility of providing information and professional opinion about defendant competency onto the other actors in the criminal justice system. Examiners provided examples that, rightly or wrongly, placed responsibility for the difficulties that arose during cross-cultural evaluations on attorneys, interpreters, prior evaluations, the current zeitgeist, the criminal justice system, and even the defendants themselves.

Shifting responsibility to someone else when having to interact with a person from another race, ethnicity, or culture can be an aspect of privilege (Baldwin, 2016). McIntosh (1998) defined privilege as the unearned advantages one holds as a result of membership in the dominant group. When applying this definition to the phenomenon as exemplified by the examiners below, privilege can become problematic. Baldwin identified two effects when privilege become a problem: "it skews our personal interactions and judgments" and "it contributes to or blinds us to systemic barriers for those who do not possess a certain privilege, thereby creating or perpetuating inequity" (2016, p. 3). This can be particularly challenging within the criminal justice system, when considering how defendants from other cultures may be perceived as the system has a well-documented history that shows "that people of color are routinely assumed to be criminals or potential criminal until they show that they are not" (Johnson as cited in Baldwin, 2016, p. 3).

Forensic examiners are subjected to the rules and restrictions of the criminal justice system as identified in the Theoretical code *Systemic Constraints*, which appears to provide increased opportunities for oppression by exerting external systemic pressure. *Systemic Constraints* categorical codes frequently emerged simultaneously with the *Shifting Responsibility*

categorical code, which indicated a likely correlation between them. The following are several examples in which examiners exhibited shifting responsibility to others:

“But there are definitely times when you have to consider the person’s culture, I think this may be further down the line and might be something that the attorney has to consider before further going to trial, but not always necessarily at the time when competency is being assessed.” (1.29)

“Do I inquire about it (culture) directly with them? I don’t do that with everybody, no. Unless there is some indication that it might be a factor. If there is records for this person that are from a different country or that they need an interpreter because they are speaking a different language, or past eval reports.” (2.56–2.57)

“Particularly when dealing with India. Indian physicians I deal with, I ask them well, what’s it like there? And they tell me, well, you’ve got to remember to ask about which part because it’s a huge country with widely disparate populations and characteristics. They can be obscure sometimes.” (3.27).

“Or maybe they are psychotic, but it’s (culture) too engrained. I don’t deal with that, I give them all to another examiner.” (4.36–4.37)

“But it does feel like they just said you should consider this, but they didn’t really tell us how or what to take into consideration as far as what that would actually look like. And I don’t get the feeling from attorneys that they know, unless it’s a language issue.” (4.116–4.117)

“Oh yea, I think that sometimes their culture is so embedded that it would difficult for them to even appreciate the fact how can someone else judge me, for example, only God can judge me. Yes, so that might be a factor, so you have to weigh that and see, but does that make them incompetent? That’s not for me to decide.” (5.80–5.81)

“Almost all the time you are receiving previous reports, so you can at least consider culturally relevant issues and be aware of that from what others have said. I always try to review all the discovery, I know some people don't, but I always go over the discovery at least a week in advance before meeting with somebody so I know.” (7.44–7.45)

“Misunderstandings occur frequently in US courts when using interpreters, but US courts use certified legal interpreters who are trained not to interrupt the proceedings or attempt to clarify when they notice if there are misunderstandings going on, because that's the job of the defense professionals.” (9.47–9.49)

“My job is to present information to the trier of fact to allow the trier of fact to make the decision. I avoid giving a direct opinion as to whether I think the person is competent or not. There are occasions where it's pretty clear, so I will say something like, ‘I believe that most courts would find this person competent to stand trial’ but I don't say that my personal opinion as a professional, because I'm not a judge and I'm not serving on that particular jury.” (9.130–9.131)

Judging Cultural Values, and Pathologizing Cultural Beliefs

During the interviews most of the examiners occasionally used language that could be interpreted as judgmental or pejorative when discussing the challenges they faced when working with a cross-cultural defendant. They also identified instances in which they were exposed to situations in which others in the criminal justice system, including other examiners, engaged in practices that appeared to be demeaning or judgmental of another's culture. These statements were categorically coded as *Judging Cultural Values*. Additionally, the examiners expressed concern about misdiagnosing a defendant due to expressed cultural differences. Related to the theoretical code *Cultural Impact On Diagnosis*, the *Pathologizing Cultural Values* categorical

code focused on instances in which examiners may have pathologized a defendant's cultural values through misinterpretation of their behavior. While specific instances where cultural pathologizing were rarely disclosed in the data, examiners more frequently expressed concern and fear over how to avoid pathologizing another's cultural values, or that they had inadvertently done so.

Expressed statements that demean based on cultural differences, judge another's cultural values, or misconstrue cultural beliefs and actions stem from the microaggression mechanics discussed at the beginning of the *Culture As A Nuisance* section. Statements and misinterpretations are insidious forms of oppression. Goodman noted, "oppression is so insidious in part because it operates on different levels- individually, institutionally and societally/culturally" (2014, p. 4). While oppression may be easiest to observe as individual acts, as some of the statements the examiners made could be construed, this is also a reductionistic perspective that fails to recognize that systems of inequality are far more pervasive and institutionalized. While individuals have biases and do occasionally act on them individually, it is the systems of inequality that devise rules, norms, and values that most often govern biased interaction and negative interpretation of encounters with others from a different culture (Goodman, 2014). It is through systemic inequality that bias is turned into oppression. The examiners, like all of us, have their biases, but it is through the systemic constraints placed upon them that individual bias can take the form of judgment and pathologizing of a defendant's culture that could create significant harm. However, the examiners also had a degree of understanding of the predicament they were in, as expressed in their interviews. Unfortunately, they were not always able to identify when judgment or pathologizing of another's culture was

occurring, nor were they able to always alter the situation due to the many variables that have been discussed in this chapter.

Below are several examples from the data that identify how the examiners exhibited an awareness of the pitfalls of judging or pathologizing a multicultural defendant, while also struggling with how to think about and treat cross cultural interactions with due regard:

“I’m not going to write down someone has a delusional disorder if it could be a possible religious or something that is specific to their cultural factors so, I think that the majority of interpreters have been helpful in deciphering cultural differences. But I find it all really frustrating too.” (1.11–1.13)

“I am recalling a lady recently who I was confused if whether her statements were religious or if they were actually delusional. It turns out her stuff was a rather kind of obscure religion in the Philippines and I’m not entirely certain what it was exactly, but she had this hang up about women not being able to commit a crime.” (1.31)

“Things that they say we might think as delusional symptoms might be quite normative in light of their culture. Or the opposite might be true, things that they might say that don’t seem to be that serious might be more serious if you consider a cultural interpretation of what they might be saying.” (2.13–2.14)

“I think it was this belief system from where he came from and he was just interpreting ours. He wasn’t quite willing to work with the legal system, but it seemed to be more a function of his culture, rather than a genuine mental illness.” (2.86–2.87)

“I had a woman, and what she had done was stab her aunt many times. She was from an Asian culture and when the police came to investigate, the aunt, even though she had been quite injured, didn’t say anything to the police until the uncle said you have to talk to her. She had

been stabbed multiple times, but she didn't say anything because you keep this in the culture. My niece isn't a bad girl; she's off her meds. You're bleeding out you know. This is a big deal."

(3.78)

"Culture is, oh, very important because you can make a misdiagnosis and say some person is psychotic because they have this belief or some alleged hallucination, when it really isn't part of a mental illness" (5.12).

"So you want to find out what they are saying first and then see, because then if it makes sense, and there are no symptoms that are bothering, then you don't need to go any further, you know culture's not a problem." (5.39)

"The question is do they have a mental disease or defect, so if it's culturally orientated and not part of a mental disease or defect, although I suppose you could argue that it's a defect in their thinking. I have not seen someone raise that argument, although it's certain an argument that could be raised, so it's because their thinking process is so rigid that it actually creates a defect for them to be unable to integrate this culture, this judicial process into their thinking process."

(5.82–5.84)

"So, in that aspect the cultural background had impaired some of her factual knowledge and then her rational understanding wasn't so much affected, and her ability to assist in her own defense wasn't really so affected, it was more the factual knowledge because of her culture."

(6.28)

"But the point is in that culture, there is inclusion of a lot of spirituality and spiritualism than in our dominate culture, it may sound crazy or schizophrenic or out of touch with reality in some way, but it's part of everyday life to this person though." (8.20)

“It certainly is likely that the examiner may not be aware. The relationship to figures of authority tend to be problematic for just about any defendant, but they may be especially difficult with different relationships and different habits for immigrants with respect to cultures of whether or not one speaks the truth toward authority figures and if you do what ways you go about speaking less than the truth. So, that also has to do with what are one’s expectations for a justice system and being on trial and many parts of the world have justice systems that you may say are a joke.” (9.82–9.84)

Assumption of Non-Effect and Accommodating Culture

As two sides of the same coin, the *Assumption of Non-Effect* and *Accommodating Culture* categorical codes emerged as examiners in this study often spoke of the conflicting ways in which they approached cross-cultural evaluations. On one side, examiners often expressed an assumption that culture was not a variable until something arose that caused them to begin to consider that it might be a factor for consideration. A large part of this consideration was that often the examiners spoke about culture and mental illness as an either/or binary choice, rather than considering that mental illness might exist in addition to a cross cultural difference. On the other side of the coin, examiners spoke about how they prepared for and attempted to proactively engage potential cross-cultural challenges by attempting to accommodate cultural differences. It was not uncommon for the same examiner to have coded statements that encompassed both of these categories within the same area of discussion. These two codes presented further evidence for the ongoing confusion and lack of specific direction in evaluating multicultural defendants and lent support to many of the other coded categories already discussed. Below are examples of the two dichotomous variables of the non-effect of culture, and accommodation of culture as expressed by the examiners.

“When we can accommodate culture, I don't see why we shouldn't.” (1.47)

“Besides, I don't know, maybe I'm just a bit curious but I like to kind of know about the culture before I go in, that way if there are any concerns, I can red flag as concerns related to culture before going in, rather than having to come back and try again if there is something I'm questioning.” (1.54)

“In general, if it's not in tandem with a mental illness then it has nothing to do with competency. I mean it's because that's the standard, it has to be due to mental disease or defect. That doesn't necessarily mean that it can't be something to find, but I've never had a case where the client's culture interfered to the point that they would seem incompetent, without a diagnosis. I mean there are times when someone might be talking about something that can sound delusional, but it's not.” (1.66–1.70)

“I'm not sure whether culture should impact the outcome or whether they are or are not competent to stand trial. I think the standard for competency is the same across all cultural groups.” (2.46–2.47)

“If someone's not getting something because of mental illness, or are they not getting something because this is foreign to their background, and if they're not mentally ill, can they be potentially restored by giving them explanations that makes sense to someone from their background. I think that's something I could pay even more attention to than I do.” (3.37–3.39)

“And you have to take that kind of cultural stuff into account ahead of time, but I'd really only say that the extreme cases do you really struggle with the kind of, oh crap, do I really... I don't even know what to do with this person, I don't, you know were giving him medication and it's not seeming to work. so maybe we need to go do this weird ritual that involves pouring honey and holy water over him, you know. It was like even if it isn't real that might be enough for them, but

I would say that those are kind the rare cases where you struggle, okay is this really kind of a culturally okay thing or maybe they're not psychotic.” (4.33–4.35)

“I feel like I don't consider culture much. As I'm saying this, I'm like huh, I feel like I don't. But again, other than I mean, really, I guess more like an issue during the interview, I guess I really don't, as much as I probably should... It's easier not to, I'm lazy.” (4.77–4.79)

“I considered all these things that led me to believe that it was not important. If you consider these factors and if you rule out the fact that someone is not presenting with psychotic symptoms that is causing them to do this particular act, or if the cultural acts were not involved in doing these sort of things and you could go one way or the other the court will be satisfied. The Court's mainly concerned about justice, in that are we getting the right answer. We get a true representation of that person and when we get a true perspective of that person only when we gather enough information to then have a reliable conclusion or opinion.” (5.48–5.50)

“So typically, how I get at it, I ask people where they were born vs. where were they raised. To get a better understanding of possible cultural issues that way. So I mean you need to get a better understanding of that, so if the person isn't really presenting with anything, and you don't want to end up going off on a tangent trying to explain that when there isn't really anything obvious, then it sometimes can be cumbersome.” (6.38–6.39)

“I haven't had the cases myself, but I have had other peers who have talked about individuals who have certain beliefs, and they're trying to tease out whether they are delusional beliefs or religious belief and that sort of cultural issue can be difficult.” (6.71)

“If I'm aware that there may be cultural issues, being able to consult with the interpreter as much as they can, if there is one. Being able to consult with our in-house, kind of experts, in

terms of cultural considerations, reviewing those things with him. Those are kind of the steps I take when prepping a competency evaluation that has a cultural consideration.” (7.29–7.32)

“Because of culture you have to be careful of not falling into the trap of you know making kneejerk assumptions about why they did or didn't do something. Do the extra work of rethinking it from a different perspective or maybe a couple three different perspectives.” (8.31–8.32)

“Language is rarely a barrier for me. Most speak at least some English.” (8.61)

“I typically want to do as much of a clinical interview as pertinent to the mental health and education and cognitive and brain injury issues as I can prior to tackling the specific issues of culture head on.” (9.117)

Overidentifying

One of the last codes to emerge, *Overidentifying* differed from the other categorical codes in *Culture As A Nuisance*. Unlike the other codes that set the examiner apart from the defendant by highlighting differences between their cultures, *Overidentifying* was a response on the other end of the spectrum, in which the examiners identified similarities between themselves and some of the defendants to a degree that could have interfered with impartiality. As a nuisance variable, overidentifying with another group can lead to minimalizing bias because of assumed similarity (Constantine, 2007). This in turn can create conflict for the examiner between advocating for the defendant and their prescribed role within the criminal justice system. Additionally, overidentification can run the risk of making an incorrect assumption about sameness about the other person. The following are examples where examiners made statements where they ran the risk of overidentifying or discussed concerns with overidentification:

“I did have one guy who was from (another country) and he had been rather angry and not really wanting to participate with people, especially the mental health staff questions. I went to

go see him, and I don't think I have much of an accent, but he did tell me that I sounded like somebody that he was more familiar with... Maybe the culturally familiarity worked to my advantage as I was able to relate.” (1.89–1.93)

“I mean a person can look just like you or me, but they grew up in an entirely different environment and have a totally different outlook on life and so like, okay... I mean cultural background is I think just something to take into account no matter what the person’s ethnicity or culture or how similar to you that you might think that they are.”(4.73)

“Well, the special case is the psychologist who has a cultural heritage that is the same or similar to that of the immigrant defendant. That can be an advantage and a disadvantage most of the time. It’s typically an advantage with respect to language and cultural understanding. It can be a disadvantage if that person doesn't have adequate cultural competency training in being able to communicate those cultural differences to an audience that is not familiar with them and maybe even recognize those differences.” (9.153–9.155)

“There is also a kind of a larger level understanding of immigrant experiences, of the immigration process, with the legalities of it, and sometimes with the refugee process, especially if the clinician is first generation and they immigrated themselves, or often second generation if they still have a lot of the family stories and family members.” (9.162)

A Last Note about Coding

All of the codes discussed in this chapter, anchored by the theoretical code *Culture As a Nuisance*, combine within three stages to form the structure of the grounded theory discussed in the next chapter. While considering the proposed theory, I hope the reader will continue to consider the complexity, distinctiveness, and overlapping manner of each of the theoretical codes. It is important to remember what the examiners said about their experience with

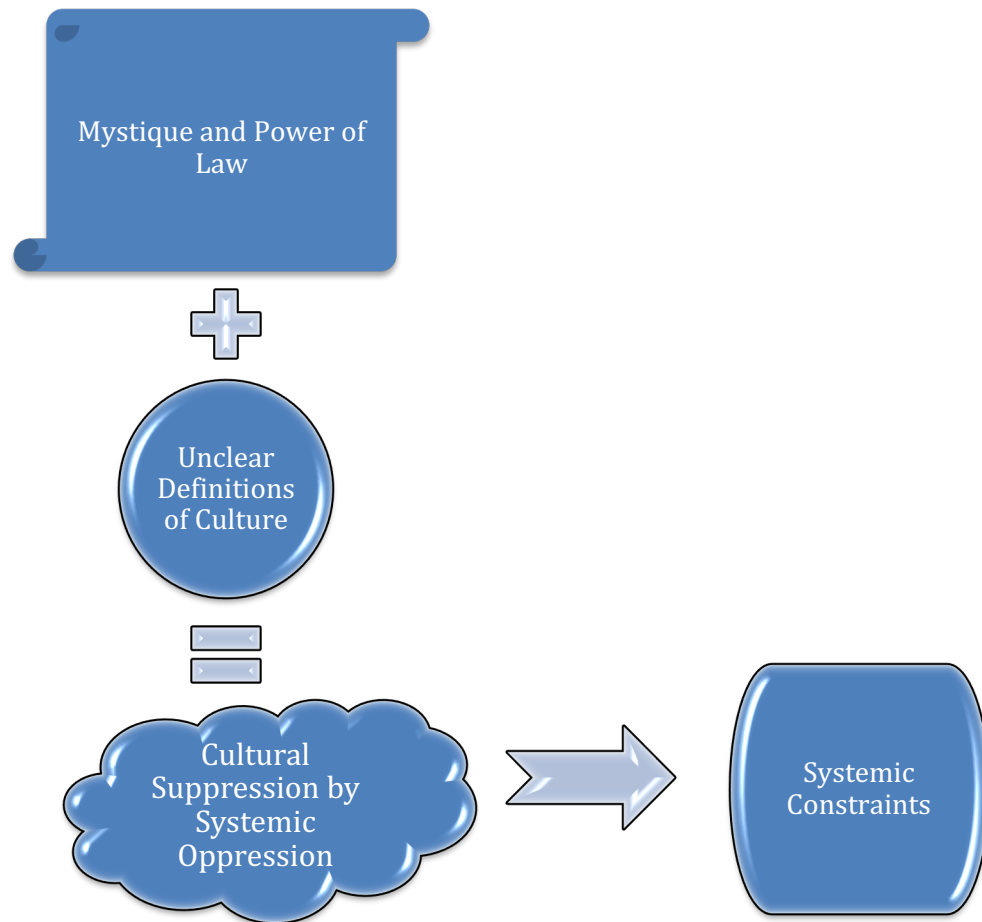
multicultural defendants and then consider that experience within the framework of the theory presented. To aid the reader, an application of the grounded theory to the Sisouvanh case is made following presentation of the theory.

CHAPTER VI: THE GROUNDED THEORY

Following the descriptions, structure, and order of presentation for each thematic code described in the previous chapter, this chapter will show how each of the codes work together to form a grounded theory explanation of how forensic examiners address cultural differences in defendant evaluations of competency to stand trial. *Culture as a Nuisance* emerged as the principal theoretical category to the grounded theory. This code is the central concept within a complex matrix that links system level challenges of how defendant cultures have been addressed by the criminal justice system to how forensic examiners react to culture as a variable in competency to stand trial evaluations.

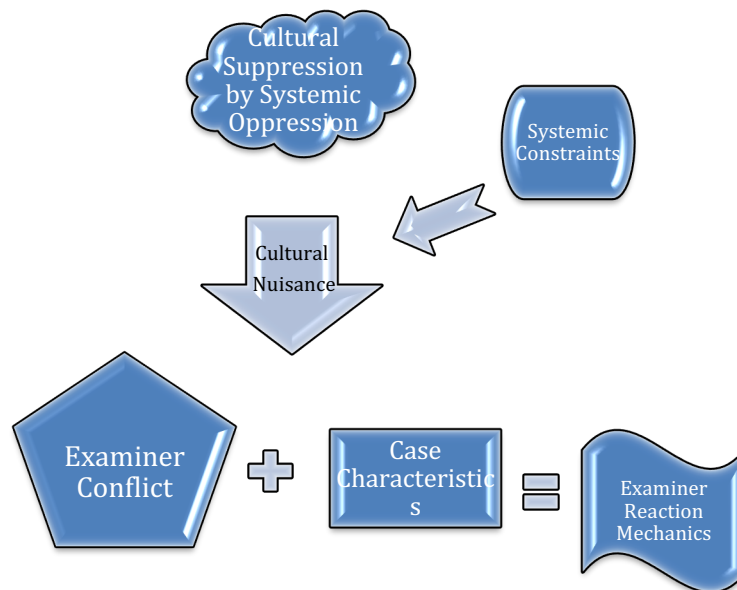
The theory is comprised of three parts. Part one considers the system level, which considers the dichotomy of how culture presents within the criminal justice system, and the residual challenges it can present to competency to stand trial evaluations. Part two examines the process level, in which the examiner has been exposed to the variables in the case, and then reacts to addressing culture in their evaluation of a defendant's competency. Part three involves the individual examiner level, which looks at a spectrum of response attitudes that impact the examiner's approach to culture for a given case. Figure 3 illustrates how the grounded theory flows and aids to clarify the reader as each of the three parts are described within the chapter.

Part 1: System Level: Cultural Suppression by Systemic Oppression (Social Justice)



Systemic Constraints generate out of Cultural Suppression

Part 2: CST Process Level: Culture as a Nuisance (Cultural Competency)



Part 3: Individual Examiner Level: Examiner Reaction Spectrum

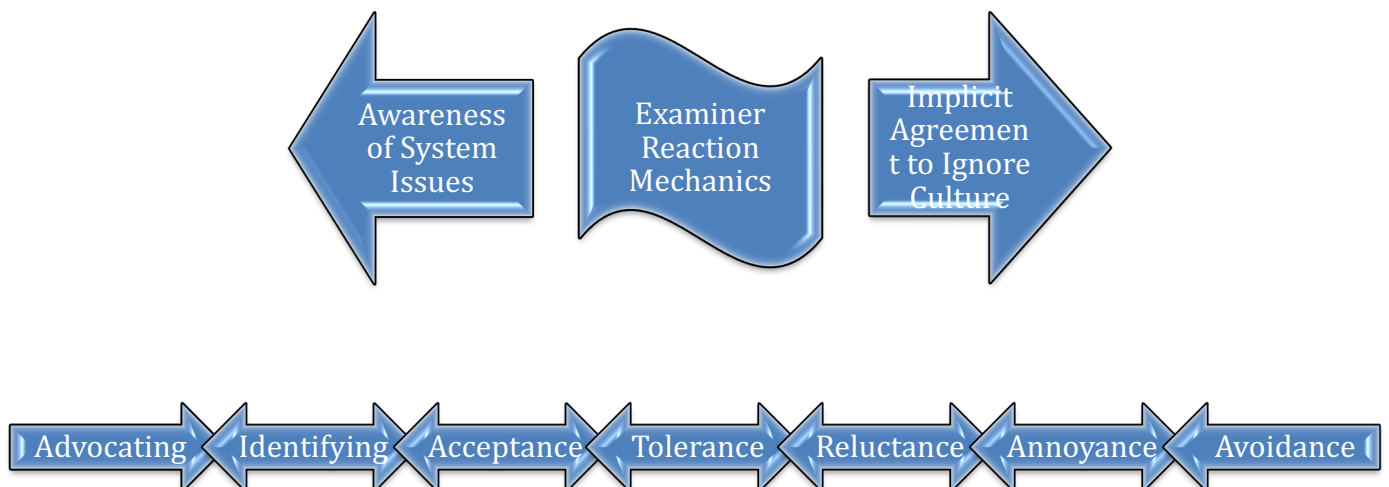


Figure 3. The grounded theory explained: Culture as a Nuisance

Part 1: System Level: Cultural Suppression by Systemic Oppression

The Mystique of Law

Law is perhaps the most complex construct found within American society (Katz & Bommarito, 2014). It serves as the supreme device of control as it directs and shapes all aspects of life, reaching into every social system, business, home, and relationships. In the United States, the law prescribes and guides the way in which the government is organized and operates, it defines social institutions, and dictates acceptable action and behavior of citizens. The power of law can build, alter, or even take away someone's livelihood, reputation, social standing, or individual freedom. Out of this comes a type of mystique that exists around the power associated with the law. The mystique of law is ever present in American conscious and is reinforced through a number of ways including but not limited to personal experience, education, other people's stories of their interaction with the law, and media exposure.

Within the maintenance of the mystique of law are constructed truths. Chief among these, and most pertinent to this study, are those found within the equal protection clause of the 14th Amendment, that the law treats all people equally. The promise of equality under the law has been the longest maintained constructed truth with origins that can be traced to the Declaration of Independence's opening phrase: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." A similar message has been repeated in countless political speeches, historical writings, legal decisions, and legislation. Substantive due process was reinforced through the 1984 federal code under Title 18, U.S.C., Section 242, which "makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United

States.” Despite this unwavering message of equality as fundamental to the existence of law and proof of its righteousness in its application to all people, there has been and continues to be evidence to the contrary.

Laws have been written and court cases decided throughout the existence of the United States that deliberately and directly show the promise of equality under the law to be a fallacy. Numerous papers have been written that examine how law has been used as a tool for social engineering (McManaman, 1958; Potts, 1982; Tejada Villamor, 2008). Laws have historically counted non-white men as being less than a whole person (3/5 compromise, U.S. Constitution, 1787), or not a person at all, such as in the denying of American citizenship to Native Americans in the decision of *Worcester v. Georgia* (1 U.S. (6 Pet.) 515 (1832)). Laws have been instrumental in preventing numerous groups of citizens from voting, promoting segregation in all aspects of public life, and have created gaps in education, earning potential, life expectancy, and in proliferating detrimental stereotypes. The vastly disproportionate demographic makeup of United States jails and prisons stands as perhaps the most obvious of many examples that demonstrates the continued existence of systemic inequality inherent in the creation and application of laws in the United States (Alexander, 2010).

In order for the criminal justice system to maintain the message of equality under the law in the face of contrary evidence, an important, but subtle assumption has to be made, that all people subjected to the law are also equal (Acemoglu & Wolitzky, 2019). It is therefore assumed that everyone has the same understanding of the law and of the society for which the law was constructed, interpreted, and applied. It also assumes that they have access to similar resources, abilities, and experiences. By omitting any consideration of how individual differences, including culture, might make this assumption invalid, a hidden system of oppression has been

created for anyone who does not have the same background, understanding, or membership in the dominant culture. With systemic oppression in place, the juxtaposition of the contrary evidence against equality under the law becomes drowned out by the steadfast message that the criminal justice system maintains a fundamental adherence to equal application to all people. This message is further reinforced in combination with the concept known as blind justice and is what allows for the mystique of law to exist.

Blind justice is a concept that is embedded within the fallacy of equality under the law. Under blind justice, the law is presumed to not only be impartial, but also objective, seeking the truth of a matter equally regardless of who happens to be subjected to it (Capers, 2012). Therefore, a position that implies that individual differences, such as a person's race, ethnicity, or culture can bias the objectivity of the law becomes problematic as it calls into question the fundamental idealization of equal objectivity. As a consequence, the narratives around legal equality and objectivity have created an additional fallacy that labels any discussion of race, ethnicity, or culture in the context of applicability of the law as discriminatory (Wilson, 2016). This means that individual factors for consideration as to how the law may be applied differently to a given person or group become in and of themselves mislabeled as discriminatory to that person or group. By labeling discussions around how the law is interpreted and applied with respect to differences such as a person's culture as discriminatory, the mystique of law has allowed for culture to become a taboo topic in the courtroom, and has, in effect, silenced it in most cases as factor for consideration.

An Unclear Definition of Culture

The *Defining Culture* theoretical code emerged as forensic examiners attempted to define culture where it had yet to be legally defined by the criminal justice system. The lack of a clear

legal definition for culture and the questions left unanswered by the Court's decisions in the *Sisouvanh* and *Ortiz-Abrego* cases with regard to what, when, and how it should be considered set culture apart from the rest of the legally defined issues for consideration in competency to stand trial evaluations. This in combination with the effect of the fallacies of equality and objectivity perpetuated within the mystique of law left the examiners to define culture on their own, and attempt to determine its importance in their evaluation, while working within a system that largely does not recognize culture as an important variable.

Once examiners identified a culture difference, they faced different decisions about what to do about the difference. The first decision was if the defendant's culture needed to be addressed as a possible variable impacting their evaluation into competency to stand trial. If the answer was yes, then the question was how to approach it. While this may seem straight forward, a number of limitations and pressures placed on the examiners from within the criminal justice system complicated and hindered how they approached culture. Many of examiners in this study found themselves in conflict with the message of the criminal justice system, which by ignoring culture as a variable for consideration promoted its suppression through systemic oppression and was found to be the primary contributor to the constraints the system places on forensic evaluations.

Systemic Constraints

The *Systemic Constraints* theoretical code represented all of the challenges and difficulties examiners found that they had to contend with in their daily work and as a result of trying to address culture in their evaluations. The combination of the mystique of law that has largely ignored or frowned upon the consideration of culture, and a lack of a clear definition of culture has given rise to a variety of these systemic constraints. When addressing cultural

differences, examiners found that they had to take additional steps and work with other professionals, all of which created additional work, increased time pressures, often caused confusion and frustration, and frequently complicated their opinions. The examiners almost always felt the constraints of the system on how they conducted their evaluations, which fueled conflicted opinions about how to address culture. Additionally, the systemic constraints that had to be overcome to adequately address a question of cultural difference were at times insurmountable or would lead to a court decision that would have been reached regardless of how the examiner approached a cultural difference. These constraints had many of the examiners asking if considering culture in competency evaluations was a worthwhile endeavor.

Part 2: CST Process Level: Culture as a Nuisance

Culture as a Nuisance

The unclear and varied definitions of culture coupled with conflicting messages perpetuated by the mystique of law have given the criminal justice license to create bias. In this study this bias took the form as the systemic constraints placed on the forensic examiners when they attempted to address cultural differences in the cases they spoke about in their interviews. Forensic examiners tasked with navigating the quagmire created by the criminal justice system around culture as it relates to competency to stand trial evaluations expressed confusion and frustration with the lack of a clear direction or best practice. This confusion and frustration was found to feed into the pressures caused by systemic constraints and worked to create an environment in which attempting to address cultural differences became a nuisance.

Culture As A Nuisance is the central theoretical code to this grounded theory. It represents the reactions by the examiners to the criminal justice system's position on competency

to stand trial cases that involve a multicultural variable. Fueled by the systemic constraints placed on the examiners, *Culture As A Nuisance* reactions were not only tethered to the how examiners responded to the constraints placed on them by the system, but also to the characteristics of a defendant and details of the case itself.

Generally, examiners expressed a varied spectrum in level of intensity with both systemic constraints placed on them and their own interest with a case or defendant when discussing the multicultural cases they had been involved with. Often examiners expressed frustration by the systemic constraints but were interested in the details of a defendant's case. In this scenario the examiner expressed higher levels of frustration of not being able to explore the case more, as well as feeling compelled to invest more resources to explore details and differences further than he or she normally would. Conversely, examiners also expressed instances where they felt no specific challenge by the system but were themselves not especially interested in a case. Often these types of cases were talked about in a more business as usual manner. Examiners also spoke of cases that they took a particular interest in and did not experience a lot of systemic constraint; as well as some cases that they struggled with or were not particularly invested in, and also experienced considerable systemic constraint.

How the examiners felt and what steps they took to address multicultural variables in their cases varied considerably. The level of systemic constraint placed on the examiners often shaped examiner attitudes toward the degree of importance placed on culture as a variable. This in combination with their individual biases appears to have contributed to examiner conflict with how to approach a multicultural case. However, the details of the case were also sometimes seen to be a mitigating factor. If the case was of particular interest, or the examiner identified with the defendant in some way, then their approach to the case might be different. The way in which

examiners felt about and approached multicultural cases was termed *Examiner Response Mechanics*.

Part 3: Individual Examiner Level: Examiner Reaction Spectrum

Examiner Response Mechanics

At the individual level, each examiner described reactions to the cases they discussed that involved multicultural variables, as well as expressing a variety of emotions and attitudes toward culture as a factor in considering competency to stand trial evaluations. The reactions by the examiners lay along a spectrum and resulted from the *Culture As A Nuisance* theoretical code, supported by the *Emotionality* theoretical code, and in reaction to the other theoretical codes that formed the system and process levels of the grounded theory. The spectrum of reactions that the examiners had fell into seven categories that ranged in order from: a position of *Advocating* for a defendant whose cultural experience differs from the dominate society, *Identifying* with the defendant's differences, *Acceptance* of a defendant's culture as a factor in considering competency to stand trial, *Tolerance* that a defendant's culture may in some way impact an evaluation of competency, *Reluctance* to consider culture as a factor, *Annoyance* that they might have to consider culture as a factor, and *Avoidance* of the issue of culture altogether. Table 2 further defines each of the seven examiner reactions.

Table 2 Definitions of Examiner Reaction	
<u>Examiner Reaction</u>	<u>Definition</u>
Advocating for a Defendant	The examiner has taken it upon him/herself to challenge system status quo and pursue a position of advocacy on behalf of a defendant, where the examiner felt that the defendant's cultural experience/worldview was a factor in reaching an opinion on competency to stand trial.
Identifying with a Defendant's Cultural Difference	The examiner has identified in a personal way with the defendant's cultural difference and works to ensure it is considered in the evaluation, even if the court may not acknowledge the significance.
Acceptance of a Defendant's Culture as a Factor	The examiner has accepted that when a defendant's culture varies from that of the dominant society it can impact evaluations and works to consider it as a factor. The examiner will sometimes challenge the system to reach an opinion.
Tolerance of a Defendant's Culture as a Factor	The examiner has acknowledged that in some cases a defendant's culture may present in a way that it can impact interpretation of an evaluation. The examiner will work within the constraints of the criminal justice system to account for culture as a variable when necessary.
Reluctance to Acknowledge Culture as a Factor	The examiner has acknowledged that in some cases a defendant's culture may present a challenge, but only in extreme cases could it interfere with the legal standard for competency to stand trial.
Annoyance that Culture May be a Factor for Consideration	The examiner has subscribed to a strict view of the legal standard for competency to stand trial and follows the belief that the law should not and does not make accommodation for a defendant's cultural understanding or worldview. However, the examiner has acknowledged that culture can alter interpretation; therefore, a defendant should be evaluated on capacity to comprehend, which is viewed as being able to be observed apart from the defendant's culture.

Within the spectrum of responses all of the examiners in this study vacillated between categories depending on the factors of the case, degree of systemic pressure, and individual attitudes toward culture as a factor for consideration in forensic evaluations. In general, attitudes

toward culture fell within two categories: An Implicit Agreement to Ignore Culture, and Awareness of the System Issues that have led to the ignoring culture. Although all of the examiners discussed points of view and cited evidence that fell within both categories, they also expressed varying degrees of conflict between the two categories. The contrasting perspectives of the criminal justice system, within which they work, and the mental health system from which they were trained and licensed, have fueled this conflict and left the examiners without a clear path forward.

The degree of examiner fluctuation between the spectrum categories usually varied one or two positions. This was most likely due to whether the examiner's attitudes and beliefs most often aligned with the Implicit Agreement to Ignore Culture, or Awareness of System Issues categories. However, when I applied this spectrum back to the interviews, one examiner was seen to vary from *Annoyance* with one case, to *Identifying* with another. This significant swing suggests that other variables may also be important including, but not limited to demographics of the examiner, number of years working as an examiner, previous experiences with a specific culture, or individual factors like amount of sleep, caseload, or even examiner emotional state. After the interview, it was later discovered that the examiner, who had only been working as an examiner for about a year also had been experiencing a significant life-changing event during one of the cases discussed.

Additional Support for the Grounded Theory

After the results of this theory were developed, an additional literature search was conducted to identify potential support in other areas of research. While no results were located regarding the application of this type of research within forensic psychology, the Hofstede model of dimensionalizing cultures originally developed between 1967 and 1973, and later revised in

2010, drawn from cross-cultural psychology was identified as having potential similarity to the examiner reaction spectrum in Part 3 of this model. The comparability between Hofstede's findings and the results presented in this study lent further support to this grounded theory and may be used to expand the ground theory's findings with additional future research.

The Hofstede model originated out of research using factor analysis for understanding cross-cultural communication in business settings and has been used as a paradigm in cross-cultural psychology research (Pogosyan, 2017). The Hofsteade model postulated six dimensions of culture: Power Distance, Uncertainty Avoidance, Individualism/Collectivism, Masculinity/Femininity, Long/Short Term Orientation, and Indulgence/Restraint (Hofstede, 2011). These dimensions comprised a framework that when applied to a culture, can show general attitudes and beliefs toward key areas of importance when considering cross-cultural interactions. Each of the dimensions is listed Table 3 with their description.

Table 3 Hofstede Model of Dimensionalizing Culture (2012)	
<u>Dimension</u>	<u>Description</u>
Power Distance	Related to the different solutions to the basic problem of human inequality
Uncertainty Avoidance	Related to the level of stress in a society in the face of an unknown future
Individualism vs. Collectivism	Related to the integration of individuals into primary groups
Masculinity vs. Femininity	Related to the division of emotional roles between women and men
Long Term vs. Short Term Orientation	Related to the choice of focus for people's efforts: the future or the present and past
Indulgence versus Restraint	Related to the gratification versus control of basic human desires related to enjoying life

The Hofstede model has potential application to this study in two important ways. First some of the descriptions of the six dimensions have similarity with the responses forensic examiners provided that established the examiner reaction spectrum. Secondly, the dimensions could be used to interpret examiner reactions based within the context of the norms created for the examiners by the criminal justice system and contrast them with the varying cultural norms of the defendants they have evaluated. Application of the Hofstede Model in this way may provide additional insight into how and why examiners react differently along the spectrum.

CHAPTER VII: CONCLUSIONS

According to one popular definition, cultural competence in mental health services occurs when a set of congruent behaviors, attitudes, and policies come together in a system, an agency, or among professionals to enable effective cross-cultural work (Cross et al., 1989). While the proposition that increased cultural competence in providing psychiatric services can reduce existing cross-cultural disparities is appealing, cultural competence has lacked a clear means of operationalization to direct research and practice (Hernandez et al., 2009). The grounded theory proposed in this study may help researchers and forensic evaluators understand how the systems they interact with and their own beliefs and attitudes can impact evaluations of multicultural defendants in competency to stand trial evaluations.

Theoretical Application

As an example of the possible application of this theory, let us return to Washington *State v. Sisouvanh*. The case has been briefly recapped and this grounded theory applied in steps to give the reader a sense of applicability. It is important to remember that the *Sisouvanh* case was the first to be heard by the Washington State Supreme Court that directed forensic examiners to consider culture as a factor in competency to stand trial. Specifically, the court stated:

It is critical that competency evaluations be conducted by qualified experts and in a qualified manner. There may be times when an otherwise qualified expert fails to reasonably account for the need for cultural competence, and we may, in an appropriate case, conclude that a trial court has abused its discretion by accepting a competency evaluation that did not reasonably account for the defendant's culture. (*State v. Sisouvanh*, 2012, p. 38)

Sisouvanh Revisited

The following information was adapted from the Amicus Curiae (Attorneys for Amicus Curiae and Fred T. Korematsu Center for Law and Equality, 2012) and Appeal decision of the Supreme Court of Washington (State v. Sisouvanh, 2012):

Phiengchai Sisouvanh was convicted of aggravated first-degree murder of Araceli Camacho Gomez. Shortly after the murder, Sisouvanh abducted Gomez' unborn fetus by cutting him from the womb; she then called emergency services and reported that she had given birth to the baby. Sisouvanh ultimately confessed to the crime, was arrested, and sent to trial. After questions were raised about Sisouvanh's mental health, the court ordered an evaluation of her competency to stand trial. Sisouvanh was remanded to Eastern State Hospital for a competency evaluation. While there, she was observed and evaluated by a forensic psychologist over the course of fifteen days. Based on the information that Sisouvanh was likely malingering symptoms of a dissociative disorder provided at testimony by the evaluating psychologist, the judge ruled that she was competent to stand trial.

Testimony regarding Sisouvanh's history reported that she had been born to a lowland Laotian family while living in a primitive refugee camp in Thailand with very limited resources. Her family immigrated to Minnesota when she was six years old and it was reported that she had been physically abused by her mother. Records presented at trial by the defense indicated that when she was nine years old, Sisouvanh's mother had beaten her for brushing her hair wrong and she had been taken to an emergency room (Cary, 2010). After officials at Sisouvanh's elementary school filed additional

reports of abuse by her mother, she was removed from the home by social workers (Horton, 2010).

By 2001, Sisouvanh had relocated to Washington State and graduated with honors from high school in 2004 (Horton, 2010). She went on to obtain nursing assistant credentials. However, “as she grew older, she began to live a fantasy life that reflected the all-American-girl life so different from her own” (Cary, 2010). Arguments by her defense attorney reported that Sisouvanh sent out invitations to a wedding with a fictional groom and started using the groom's last name at work. It was also reported “she told a former lover two years later that she had borne his son and talked in the child's voice on the telephone” (Cary, 2010). The defense argued that for over five years Sisouvanh had repeatedly “shown keen interest in pregnant women and claimed she also was pregnant” (Cary, 2010).

Sisouvanh ultimately appealed her conviction citing an improperly conducted competency to stand trial evaluation by the forensic evaluator, who the defense alleged, “failed to properly account for her distinct cultural background as a Laotian immigrant” (State of Washington v. Sisouvanh, 2012, p. 1). The Washington State Supreme Court agreed with the defense that “the basic need for cultural competency on the part of an expert or professional person conducting a competency evaluation is important and indisputable” (p. 31). However, the court rejected the defense’s argument that the evaluator had not conducted the evaluation in a culturally qualified manner.

The Court noted that the evaluator “reasonably accounted for cultural competency in his examination” (p. 33), and quoted the following information as a basis to show that she was “substantially acculturated to the United States” (State of Washington v. Sisouvanh, 2012, p. 14):

“Sisouvanh came to the United States when she was five years old, was socially active in high school, graduated and then obtained a nursing assistant certification, and passed her board exams on her first attempt... (and) concluded that he could rely on the tests he administered and his interpretation of Sisouvanh's behavior, without investigating her background any further, and without learning more about her Laotian culture.” (State of Washington v. Sisouvanh, 2012, p. 14)

In addition to the information identifying Sisouvanh as acculturated to the United States, the Court also considered her test results, which were “extreme in their indication of malingering, which in combination with her acculturation, made a culture-based misdiagnosis less plausible” (State of Washington v. Sisouvanh, 2012, p. 37), and that the competency determination was based on numerous tests and observations, including that of the hospital staff, “rather than any one source of information, rendering his determination more reliable.” (State of Washington v. Sisouvanh, 2012, p. 37)

Systemic Level

The examiner in the *Sisouvanh* case was placed in a position in which the Court had not previously offered an opinion as to the importance of culture as a factor in forensic evaluations and it was initially unclear to the examiner to what degree culture might have been an issue. In addition to the concern about how much Sisouvanh’s cultural heritage needed to be addressed, the case began to receive significant local and even national news coverage due to the unusual facts and severity of the crime. The examiner likely faced unusual inquiries and pressures from outside sources, as well as time pressure from the court to reach an opinion within fifteen days (State of Washington v. Sisouvanh, 2012).

Culture as a Nuisance

The examiner received reports from the treatment team that suggested that Sisouvanh was possibly malingering her symptoms. “Staff members observed that Sisouvanh stopped displaying delusional behavior in particular when she did not know she was being observed” (State of Washington v. Sisouvanh, 2012, p. 8). It was determined that Sisouvanh spoke English fluently, having been educated in the United States since elementary school and no interpreter was called on to assist with the case. However, interviews with Sisouvanh conducted by the evaluator were described as frustrating. The evaluator noticed no sign of a thought disorder when Sisouvanh was answering background questions but would begin to express delusional thoughts as soon as he asked about the trial court. Despite the challenges presented in the interview, based on her historical information, and her ability to interact with staff and peers while in the hospital, the evaluator felt that Sisouvanh was acculturated.

Based on his findings that she was acculturated, the evaluator felt confident that he could use standard psychological testing instruments with Sisouvanh, even though he acknowledged that they were not normed on Laotian populations. Testing consisted of the Wechsler Adult Intelligence Scales (WAIS), Personality Assessment Inventory (PAI), Rorschach, and Miller Forensic Assessment of Symptom (M-FAST). The evaluator interpreted results from the assessments, which included affirmative responses on the M-FAST to questions such as, “when I urinate, I see my urine as blue, and I only hallucinate on Tuesdays at six o’clock” as Sisouvanh malingering. In addition to the M-Fast, Sisouvanh’s score on the WAIS indicated a low intelligence, despite having been an honors student in high school, and the validity scales for the PAI reported the results on the assessment as likely faking bad.

Based on the totality of the information presented the evaluator “concluded that he could rely on the tests he administered and his interpretation of Sisouvanh's behavior, without investigating her background any further, and without learning more about her Laotian culture.” (Washington v. Sisouvanh, 2012, p. 14).

Individual Examiner Reaction

Despite being a case of first impression regarding culture as a variable in competency to stand trial evaluations, the examiner acknowledged Sisouvanh’s cultural background anyway and sought to address her level of acculturation. The examiner attempted several interviews with Sisouvanh and conducted a variety of assessments. He used the tools that he had available to him and noted a lack of norming evidence for Laotian populations but felt that due to a high level of acculturation that the results could be trusted.

Based on the actions taken by the examiner and consideration of the information available to him, it is very likely that he supported the concept that culture can impact a defendant’s presentation for competency to stand trial. Therefore, the examiner likely fell into the Acceptance category along the Examiner Reaction Spectrum.

Limitations of this Study

Barriers to Participation

Forensic mental health evaluators were solicited for this study using a number of sources. Although emails and phone calls were made to over 30 examiners, and flyers provided in common areas where examiners could see them, only 10 psychologists agreed to participate and one did not meet the minimum criteria of having conducted at least one competency to stand trial evaluation within the year prior to our interview. Many examiners expressed an initial interest but stated that they would not be able to participate. About half cited concerns over

confidentiality for their examinees, despite assurances of confidentiality and a copy of the IRB approval. Others stated that they would not be able to make the time, three cited non-existent policies that they said prohibited them from talking about cases, and the rest did not return messages. Perhaps this topic, or the nature of the environment in which forensic examiners work presented as a barrier to participate in this research. This is an interesting phenomenon that likely requires further exploration and may lend additional data to this theory.

Defendant Demographics

Demographic information of evaluatees was not specifically collected, so it is unclear to what degree demographic characteristics of defendants may have impacted the evaluators' process. Anecdotal information from the interviews identified Southeast Asian males and females, as well as Black males as the groups most represented in the cases the evaluators chose to speak about. But since the evaluators were free to direct the interviews, it is unclear if defendant demographics of other groups presented other challenges or not, or perhaps were not represented in the cases evaluated.

Research conducted by Kois and Chauhan (2016) may help to structure future examinations about evaluator and defendant interaction dynamics. They looked at demographic differences between evaluators and evaluatees and found that in a study of 100 forensic evaluators, the majority of evaluators were identified as female, white, non-Hispanic, U.S. Born, English speaking, while evaluatees were typically male from diverse race/ethnic and native backgrounds. The correlations of demographic information closely matched practitioner and correctional statistics, as cited by Golinelli & Minton (2014) and APA-CWS (2015). "The lack of demographic variability among evaluators as opposed to the diversity in evaluatee

demographics suggests that opportunities are ripe for cross-cultural misconceptions in forensic evaluation contexts” (Kois & Chauhan, 2016, p. 7).

Generalizability and Data Saturation

While it was clear that data saturation was attained from the interviews given by the examiners interviewed for this study, factors affecting a subset of evaluators not represented by the participants may present additional relevant data. While the evaluators in this study were fairly well representative of both state government and private practice, all but one came from Western Washington. Geographical location and potential varying defendant and examiner demographics from elsewhere in the state may present different challenges. One suggestion for future research is to conduct interviews with evaluators from Eastern Washington, being characteristically more rural, politically conservative, and more culturally homogenous. Experiences of evaluators in the eastern part of the state could enrich the dataset from this study and offer important additions or challenges to the grounded theory.

While similar to the issues around data saturation and generalizability to other areas of the State of Washington, questions also exist regarding applicability of this theory to other jurisdictions that approach competency to stand trial in a different manner from that of Washington State. Although the Dusky Standard established by the United States Supreme Court has been used as the basis for competency to stand trial across the country, variation exists in legal processes and practice across jurisdictions.

In an attempt to identify to what degree culture has been identified as a factor for consideration in competency to stand trial in other states, a search through the attorney general’s website for each state was conducted. No results were found with any similarity to the *Sisouvanh* or *Ortiz-Abrego* cases in Washington. These results suggest several possible reasons. One

possibility, although unlikely, is that cases involving culture in competency to stand trial evaluations simply are not being reported by the state's attorney general. Other possibilities are that culture has not been raised as a factor in a case that has risen to the level of being heard or accepted by the state's appellate or supreme court, cultural differences have not been an issue in competency evaluations within the jurisdiction, or culture has been outside the scope of consideration as a factor by the state.

Where do we go from here?

When considering the question of "where do we go from here?" perhaps part of the answer lies within the skills and lessons taught during clinical training. Similar to the developmental process of cultural awareness and competence in counseling identified by Sue and Sue (1990; 2016), developing culturally sensitive forensic evaluations also requires the self-reflection and awareness that provides psychologists the opportunity to confront bias assumptions, attitudes, beliefs, and behaviors. Self-reflection could help examiners to challenge cultural bias and ethnocentric assumptions by allowing them to understand themselves within a cultural context so as to objectively consider multiple perspectives and engage in effective decision making (Tomlinson-Clarke, 2013).

Examiner attitudes and beliefs are key aspects to this grounded theory and represent the one area that examiners have the most control over to impact their reaction to multicultural forensic evaluations. The model presented in this theory was designed to be used by examiners to engage in the type of self-reflection that will effect directed change to address degree of maladaptive beliefs and attitudes that could interfere with how they perceive and approach these evaluations. However, it will not be until forensic psychology has decided to apply the lessons learned from the *Sisouvanh* case that examiners must recognize and consider the importance of

multicultural context in an evaluation, and then use competent professional discretion in how to apply it, so that a best practice can become possible.

Confusion around definitions of culture was seen as a contributing source of frustration among examiners in this study, and a strong contributing factor to examiner reaction mechanics when faced with multicultural competency evaluations. However, an agreed upon definition of culture may not be necessary for forensic psychology to begin to implement more cultural awareness. Examiners in this study identified demographic characteristics that all contribute to culture and are akin to Hays' (2008) "ADDRESSING" framework commonly used in clinical practice. Models such as "ADDRESSING", can help clinicians better recognize and understand cultural influences as a multidimensional construct that includes **A**ge, **D**evelopmental and acquired **D**isabilities, **R**eligion, **E**thnicity, **S**ocioeconomic status, **S**exual orientation, **I**ndigenous heritage, **N**ational origin, and **G**ender identity (Hays, 2008). This type of model does not define culture per se but does provide a framework from which clinicians can achieve better understanding with any person of any cultural identity (Hays, 2008).

The other areas of this grounded theory, systemic challenges and case characteristics, are largely out of the examiner's immediate control, and until forensic psychology accepts the importance of culture as a factor for consideration, these cases will likely continue to present factors that influence how much of a nuisance culture may be in an evaluation. While the criminal justice system is often slow to accept and institute change, and culture as a factor of importance in competency to stand trial is a newly evolving concept, it has the potential to gain traction as precedent has already been established. History has shown that the majority of landmark decisions and procedural changes have occurred when outside forces pressure the system, or experts' band together to present scientific evidence that establishes a new precedent.

In this case, the courts appear to be ahead of forensic psychology and have already mentioned that they may rely on legislation to make decisions for the field if evaluators lack the will to find common ground. If material systemic change is to occur that is copasetic with reasonable and ethical psychological practices, the field of forensic psychology as a whole needs to embrace and address this issue, institute best practice policies and guidance, and guide the necessary change from the rest of the legal system, before it is legislated for them.

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Revised Code of Washington Legal References

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RCW 10.77.050 Mental incapacity as bar to proceedings.

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RCW 10.77.070 Examination rights of defendant's expert or professional person.

RCW 10.77.090 Stay of proceedings - Commitment - Findings - Evaluation, Treatment -
Extensions of commitment - Alternative procedures - Procedure in non-felony charge.

RCW 10.77.092 Involuntary medication - Serious offenses.

RCW 71.05 Mental illness.

RCW 71.05.020 Definitions.

APPENDIX A: IRB APPLICATION AND APPROVAL

IRB (Approved October 29, 2015, by the Antioch University Seattle IRB Review Board)

Project Purpose(s): (Up to 500 words)

The proposed study seeks to answer the question: What is the interaction of culture with the competency to stand trial (CST) process from court referral to adjudication? To answer this question, this study aims to explore the experiences of forensic psychologists, and legal professionals including prosecuting attorneys, defense attorneys, and judges who work with multicultural defendant populations requiring evaluation and adjudication for CST. Currently the literature is sparse on the impact that culture plays on the legal requirements of the *Dusky Standard*² of proving adjudicative competency. Areas specific to the population impacted in this study involve competency decision making, defendant presentation in court, capacity to understand the U.S. justice system, use of forensic assessment tools and standardized measurement, evaluation processes, identifying malingering, symptom manifestation, responsiveness to treatment for competency restoration, presumption of competency of a defendant prior to assessment, and potential misinterpretation of misunderstood cultural practices as symptoms of a mental disease.

Overall this study has important implications for the practice of competent multicultural forensic assessment, direction for the court with regard to CST of multicultural defendants, and defendant equality up to and including sentencing of the death penalty. However, this issue is currently poorly understood and rarely addressed in the field or by the law. As such, legal professionals and forensic evaluators have little guidance in how to appropriately address the issue. This study intends to help provide a theoretical framework toward establishing best practices for the protection of the due process rights of all defendants facing CST evaluation and adjudication regardless of their cultural heritage.

Describe the proposed participants- age, number, sex, race, or other special characteristics. Describe criteria for inclusion and exclusion of participants. Please provide brief justification for these criteria. (Up to 500 words)

The study focuses only on adult professionals who have direct influence on the adjudicative CST process. In order to achieved data saturation in which no new thematic content is identified, there will be an expected nine to twelve interviews conducted from the following populations: At least six interviews conducted with Licensed Washington State Psychologists who have had experience working with forensic CST evaluations in 1) a state run hospital or institution, and/or 2) as independent consultants in private practice.

The remaining interviews will be with defense attorneys, prosecuting attorneys, and judges who routinely work with CST adjudication.

² Dusky v United States

This sampling of participants addresses all of the individuals who directly impact day-to-day CST evaluation of defendants.

Describe how the participants are to be selected and recruited. (Up to 500 words)

Participants will be solicited via email or in person using a flyer attachment, beginning with evaluators at Western State Hospital, the Pierce County Mental Health Court, King County Prosecutor's Officer, and the Washington State Defense Bar. Since the number of professionals is limited who adequately match the requirements of this study, the goal is to obtain participants through direct recruitment and via snowball sampling. See sample letter and flyer attached.

Describe the proposed procedures, (e.g., interview surveys, questionnaires, experiments, etc.) in the project. Any proposed experimental activities that are included in evaluation, research, development, demonstration, instruction, study, treatments, debriefing, questionnaires, and similar projects must be described. USE SIMPLE LANGUAGE, AVOID JARGON, AND IDENTIFY ACRONYMS. Please do not insert a copy of your methodology section from your proposal. State briefly and concisely the procedures for the project. (500 words)

Participants who volunteer will sit for an interview, either at their workplace, a private neutral space by mutual agreement with the researcher, or by telephone as a less preferred option. The interviews will be recorded, transcribed, and coded using a constructivist grounded theory methodology as described by Charmaz (2014). Theory will then be developed from the data to create an understanding of the phenomenon based on the participants' in vivo experience.

Participants in research may be exposed to the possibility of harm — physiological, psychological, and/or social—please provide the following information: (Up to 500 words)

- a. *Identify and describe potential risks of harm to participants (including physical, emotional, financial, or social harm).*

As participants are likely to be recalling and describing in some detail events that may have had a negative outcome on another person (including the death penalty), they may feel upset or distressed.

Participants may provide candid responses that could be considered controversial to their work environments, and place the participant in potential harm for a disciplinary or retributive response.

Participants may inadvertently provide identifying information for clients or patients during the in depth interviewing process. This could lead to an ethical breach of confidentiality and disclosure.

- b. *Identify and describe the anticipated benefits of this research (including direct benefits to participants and to society-at-large or others)*

Culture is the fundamental foundation from which all human experience is lived. Despite this, little attention has been given to the ways in which an individual's cultural experience informs

the way that they perceive the criminal justice systems, mental illness manifestation and treatment, or how preconceived opinions by professionals toward defendants impacts CST evaluation and adjudication.

Currently, so little has been researched about this experience that this study will offer a significant foundation for further research, both through giving in vivo substance to the experience of those professionals involved, and through the development of the grounded theory based on the data that could serve as a basis for a best practice in conducting multicultural forensic CST evaluations. Participants may also find that describing their experience has beneficial effects from being able to speak their voice, feeling heard, creating meaning or contributing to a larger understanding about this problem.

c. Explain why you believe the risks are so outweighed by the benefits described above as to warrant asking participants to accept these risks. Include a discussion of why the research method you propose is superior to alternative methods that may entail less risk.

The risk of harm is minimal, can easily be controlled through protecting confidentiality, and is greatly outweighed by the potential for greater understanding for the individual participants and especially for those who work with multicultural defendant populations. While in-depth interviews create more potential for distress, they also provide a much greater depth and meaning in the resulting data.

d. Explain fully how the rights and welfare of participants at risk will be protected (e.g., screening out particularly vulnerable participants, follow-up contact with participants, list of referrals, etc.) and what provisions will be made for the case of an adverse incident occurring during the study.

Participants will have full informed consent and will be able to decline or cease participation at any time. All participants will be offered a list of support resources if they find that the questions create distress. Interviews will be held in a safe environment with the mutual agreement of the researcher and participant. Should a participant experience a significant enough response during the interview to warrant concern, the interview will be stopped and the participant given appropriate supports (e.g. a break, a trusted person to speak to, reminder that they may stop the interview) as needed. Additionally information that could lead to the individual identification of the participant or of any discussed patient or client, will be removed and protected to the fullest ability of the researcher, including encryption of all stored data, not publishing identifying information, or permitting access to the data to any party under the authority of law and the APA ethical code.

16. Explain how participants' privacy is addressed by your proposed research. Specify any steps taken to safeguard the anonymity of participants and/or confidentiality of their responses. Indicate what personal identifying information will be kept, and procedures for storage and ultimate disposal of personal information. Describe how you will de-identify the data or attach the signed confidentiality agreement on the attachments tab (scan, if necessary). (Up to 500 words)

Informed consent form with the confidentiality agreement are attached.

Participants' contact information will be encrypted and stored securely and separately from the interview data, which will be identified only with a code. No real names will be used in any quotations from the data. Recordings of interviews will also be encrypted and stored securely and separately from identifying data, with the second/backup recording destroyed immediately after transcription using Secure Erase software.

*19. Informed consent and/or assent statements, if any are used, are to be included with this application. If information other than that provided on the informed consent form is provided (e.g. a cover letter), attach a copy of such information. If a consent form is not used, or if consent is to be presented orally, state your reason for this modification below. *Oral consent is not allowed when participants are under age 18.*

N/A

20. If questionnaires, tests, or related research instruments are to be used, then you must attach a copy of the instrument at the bottom of this form (unless the instrument is copyrighted material), or submit a detailed description (with examples of items) of the research instruments, questionnaires, or tests that are to be used in the project. Copies will be retained in the permanent IRB files. If you intend to use a copyrighted instrument, please consult with your research advisor and your IRB chair. Please clearly name and identify all attached documents when you add them on the attachments tab.

No copyrighted information will be used in this study. All material has been originated from the researcher.

See attached sample research questions (Appendix C).

Notification of IRB Approval

Dear Shawn Curtis,

As Chair of the Institutional Review Board (IRB) for 'Antioch University Seattle, I am letting you know that the committee has reviewed your Ethics Application. Based on the information presented in your Ethics Application, your study has been approved.

Your study has been approved for Exempt status by the IRB. As an exempt study, there is no requirement for continuing review. Your protocol will remain on file with the IRB as a matter of record. While your project does not require continuing review, it is the responsibility of the P.I. to inform the IRB if the procedures presented in this protocol are to be modified or if problems related to human research participants arise in connection with this project. Any procedural modifications must be evaluated by the IRB before being implemented, as some modifications may change the review status of this project. Please be reminded that even though your study is exempt from the relevant federal regulations of the Common Rule (45 CFR 46, subpart A), you and your research team are not exempt from ethical research practices and should therefore employ all protections for your participants and their data which are appropriate to your project.

Sincerely,

Mark Russell

APPENDIX B: SOLICITATION AND CONSENT

Solicitation Letter (email, mail, or hand delivery)

Shawn Curtis, PsyD Student

c/o Antioch University Seattle School of Applied Psychology, Counseling, and Family Therapy
2326 Sixth Avenue, Seattle, WA 98121

██████████@antioch.edu ██████████

(date)

Dear Dr./Mr./Ms./Hon. _____:

(Enclosed/Attached) please find information regarding a research study currently being conducted exploring the experiences of professionals who have worked with multicultural populations during the adjudicative competency process. The study is specifically looking at forensic psychologists, attorneys, and judges. Participants will be asked to join the researcher for an interview to discuss their experiences.

This research will be used for the dissertation of Shawn Curtis in partial fulfillment of the requirements for a Doctorate in Clinical Psychology (Psy.D.) at Antioch University Seattle.

If you would be willing to participate in this study, and/or have a suggestion of a colleague who would be willing to participate, please contact me via any of the means listed about (email, mail, or telephone.)

Thank you for your support,
Shawn Curtis, M.S.C.J., M.A., L.M.H.C.A.

Email/Letter Attachment

Do you have experience with competency to stand trial (CST) evaluations?

Have you ever been perplexed, distressed, or otherwise concerned about a CST evaluation or adjudicative decision about competency?

If so I would like to speak with YOU!

A current research study is looking for forensic psychologists and legal professionals who routinely work with diverse defendant populations where competency to stand trial is at issue.

Participants will be asked to meet with the researcher for a approximately one- to two-hour interview exploring your experiences with the CST process. The information gathered in the interviews will be analyzed for common themes to develop an understanding of multicultural competency to stand trial evaluations and the development of best practices. Of particular interest are those professionals who have worked routinely with immigrant and minority defendants.

Interviews will be kept strictly confidential with any identifying information removed from the data.

This research will be used for the dissertation of Shawn Curtis, in partial fulfillment of the requirements for a Doctorate in Clinical Psychology (Psy.D.) at Antioch University Seattle.

Questions about this project?

Email Shawn at [REDACTED]@antioch.edu or call [REDACTED]

Consent to Participate Form

Thank you for your willingness to participate in this research study. I hope to gain greater understanding to inform best practices to support forensic psychologists and legal professionals like yourself. Your willingness to share your experience is appreciated.

By signing below, I acknowledge that:

- My participation in this research study is voluntary and I may withdraw at any time.
- Measures will be taken to protect my privacy through encrypted storage of documents and separation of identifying information from interviews. However, if I disclose information that raises questions of a threat of future harm to others, or myself the researcher is required as a mandated reporter by Washington state law to report this information to the appropriate authority.
- I understand that discussing these experiences may be uncomfortable or sensitive. A list of support resources will be provided upon request.
- This study has been approved through the Institutional Review Board (IRB) process for The School of Applied Psychology, Counseling, and Family Therapy at Antioch University Seattle, and for the Washington State Department of Social and Health Services: Western State Hospital.

Signature

Print name

For Office Use:

APPENDIX C: INTERVIEW QUESTIONS

Demographic Questions

1. What do you consider your gender to be?
2. How old are you?
3. What is your highest degree obtained?
4. What is your profession?
5. What do you see your job duties to be?
6. In what professional setting do you work?
7. How long have you been working as a _____ in _____?
8. Where else have you worked as a _____?
9. What has been your experience with cultural competency or similar training?
10. What is your training specific to CST evaluations?
11. How do you racially/ethnically identify?
12. How is cultural/ethnic identity important to your personal identity?
13. How is cultural/ethnic identity important to your professional identity?

Interview Questions

1. What has been your experience when conducting CST evaluations with patient(s) from a culturally different background?
 - a. Hearing a case involving CST evaluations?
 - b. Defending or prosecuting a client who required a CST evaluation?
2. What are your thoughts on the level of importance that a defendant's cultural experience plays a role in CST evaluations?
3. In your experience, how has a defendant's culture ever presented as an issue or challenge?
 - a. How did you address the issue?
 - b. Why didn't cultural differences create an issue for you?
 - c. How did you prepare so as to prevent cultural differences from becoming an issue?
4. What additional steps do you find yourself taking to address the issue of culture?

The following questions were designed as a follow-up.

5. Please tell me about your views on the relationship between culture and CST evaluation?
6. How do you generally address culture in your practice?
7. What do you do to prepare for evaluations/steps you take to prepare for issues of culture or difference?
8. Please talk about a case where you have had success or failure with cultural issues?

APPENDIX D: LIST OF CODES AND RELATED MEMOS

Open Code	Citation	Memo	Central Code	Theoretical Code
Language As Culture	1:8	Immediately went to language, when asked about culturally different backgrounds.	Language As Culture	Defining Culture
Language As Culture	1:10	Consulted with Interpreter to not only translate, but whether the Language is normalized (cultural) or delusional. Shifting responsibility? Seeking consultation? Is this appropriate. Recognizes a need for consultation.	Language As Culture	Defining Culture
Language As Culture	1:17	Annoyance with interpreter not giving accurate info Are these the same code (Lang as culture and inappropriate tools)	Language As Culture	Defining Culture
Language As Culture	1:20	Exasperated that it took so long. Language barrier caused time delay.	Language As Culture	Defining Culture
Language As Culture	2:6	Limited experience, or so the examiner assumes. May not have looked for cultural differences in people who look or speak similarly to the examiner.	Language As Culture	Defining Culture
Language As Culture	2:57	Language, ethnicity, geography, race or someone else identified a cultural difference. Obviousness is important.	Language As Culture	Defining Culture
Language As Culture	2:79	Concerns about pathologizing culture. He spoke English, which seemed to alleviate some of the stress of the cultural differences.	Language As Culture	Defining Culture
Language As Culture	3:48	Language is a strong component of enculturation.	Language As Culture	Defining Culture
Language As Culture	4:80	It sounds like unless cultural difference presents itself, evaluator might not ask about it.	Language As Culture	Defining Culture
Language As Culture	4:81	Even if they look different from the examiner, if they speak English, then culture is not explored.	Language As Culture	Defining Culture
Language As Culture	4:117	System wide problem. No one (including the attorneys) know what to do about culture.	Language As Culture	Defining Culture
Language As Culture	5:25	Interpreter should know the language and the culture	Language As Culture	Defining Culture
Language As Culture	5:26	Language is key... most critical to this examiner's approach to culture.	Language As Culture	Defining Culture
Language As Culture	5:38		Language As Culture	Defining Culture
Language As Culture	6:6	Immediately lists places where some of his defendants were from.	Language As Culture	Defining Culture
Language As Culture	7:34	Begins to consider cultural differences when there is an interpreter assigned.	Language As Culture	Defining Culture
Language As Culture	7:36	If they speak English then culture shouldn't be an issue any more...	Language As Culture	Defining Culture
Language As Culture	9:11	Evaluator is a Non-native speaker of another language and does evals in the language. Is culture captured in translation?	Language As Culture	Defining Culture
Language As Culture	9:15	A lot of experience with people from all over the world, this stands out as unusual for other examiners.	Language As Culture	Defining Culture

Language As Culture	9:16	Examiner was proud of the diversity of clients he has seen.	Language As Culture	Defining Culture
Language As Culture	9:17	Late learner of Spanish. Emersion, to what degree? How does later exposure to a language impact understanding of cultural nuance?	Language As Culture	Defining Culture
Language As Culture	9:18	Is there a danger of misinterpreting culture, because of confidence in the language and own experience? Don't know what you don't know.	Language As Culture	Defining Culture
Language As Culture	9:30	Of all the dimensions, language came up first. Possibly most salient? Or most obvious?	Language As Culture	Defining Culture
Language As Culture	9:45	Language use by defendants can often be different than that used by those in power, leading to breakdown in understanding. (Speak proper English) Lost in translation. Terms mean different things in another language than they do in English. Role or name doesn't translate correctly or doesn't exist in native language. This is a CRITICAL component for culture.	Language As Culture	Defining Culture
Language As Culture	9:126	Similar heritage can have similarity in cultural and language understanding, but nuance is not addressed.	Language As Culture	Defining Culture
Language As Culture	9:154	Cultural nuance is not the same as simply knowing the language. Language is an advantage however.	Language As Culture	Defining Culture
Language As Culture	9:156	The court assumes that language is the same as culture, and doesn't parse it out. Interpreter's may actually know this, but are limited by the system to do anything about it.	Language As Culture	Defining Culture
Language Apart from Culture	9:172		Language As Culture	Defining Culture
Non-English Speakers	9:10	Works mostly with non-Native English speakers Sees almost no English speaking clients, and has gotten more and more clients over the years. High demand.	Language As Culture	Defining Culture
Non-English Speakers	9:13	Does he prefer non-English speaking clients? Language was identified as major issue, but not	Language As Culture	Defining Culture
English Fluency	9:107	acculturation... The system assumes that non-native speakers who have fluency in English should not need an interpreter. However, there may be a simplified vocabulary that may not be identified, and a loss of nuanced understanding.	Language As Culture	Defining Culture
English Fluency	9:170	The examiner draws a connection/rule out with the CST process and individual literacy. Going back to the written vs oral tradition of American Courts. Also addresses a cognitive capacity question.	Language As Culture	Defining Culture
Native Literacy	9:119	So are they showing up as incompetent to stand trial simply due to a Language gap?	Language As Culture	Defining Culture
Language Gap	4:20		Language As Culture	Defining Culture

		Consulted with Interpreter to not only translate, but whether the Language is normalized (cultural) or delusional. Shifting responsibility? Seeking consultation? Is this appropriate. Recognizes a need for consultation.	Language As Culture	Defining Culture
Relying on Interpreters	1:10			
Relying on Interpreters	1:12	Cultural consultation with interpreters, not just language. (only option?)	Language As Culture	Defining Culture
Language & Cultural Assumptions	1:89	Sounded like someone familiar with. Language is a part of culture... helps put people at ease.	Language As Culture	Defining Culture
Language & Cultural Assumptions	1:90	Shared ethnicity. Confound culture and ethnicity	Language As Culture	Defining Culture
Language & Cultural Assumptions	5:41	Acknowledgement that culture should always be considered... the examiner relies on language and native country as flags for identifying cultural differences.	Language As Culture	Defining Culture
Language as a Barrier	3:20	Language as the main difficulty	Language As Culture	Defining Culture
Language as a Barrier	4:32	The examiner stated that she usually doesn't see "severe" culture, just mostly language barriers.	Language As Culture	Defining Culture
Geographical Differences	1:22	Where they're from matters. Location, location, location.	Geography As Culture	Defining Culture
Geographical Differences	2:7	Multitude of geographical locations... implies culture. Examiner is putting all the elements of what we had previously talked about together to define culture for himself.	Geography As Culture	Defining Culture
Geographical Differences	3:10		Geography As Culture	Defining Culture
Geographical Differences	3:24		Geography As Culture	Defining Culture
Geographical Differences	3:25		Geography As Culture	Defining Culture
Geographical Differences	3:85	Everyone shared a historical event from within a specific region and group. Timeframes Impact Culture. Suggests that unless you have first hand knowledge of the culture, then there is no way to know.	Geography As Culture	Defining Culture
Geographical Differences	4:126		Geography As Culture	Defining Culture
Geographical Differences	7:6	Used a case study to demonstrate the impact that culture can have on Dx. Referenced geographical location first and then how long the defendant was in the U.S.	Geography As Culture	Defining Culture
Geographical Differences	8:19	Specifics about the interpreter is important. Time, region, social class, etc.	Geography As Culture	Defining Culture
Geographical Differences	9:72	Similar example as before.	Geography As Culture	Defining Culture
Geographical Differences	9:74	Variety of experiences with different defendants is important to understanding challenges of culture. Immediately lists places where some of his defendants were from.	Geography As Culture	Defining Culture
Geography as Culture	5:5		Geography As Culture	Defining Culture
Geography as Culture	6:6		Geography As Culture	Defining Culture
Geography as Culture	6:11		Geography As Culture	Defining Culture
Geography as Culture	9:18	Is there a danger of misinterpreting culture, because of confidence in the language and own experience? Don't know what you don't know.	Geography As Culture	Defining Culture

Not From Here	1:52	Where the defendant is from may be an indicator to the examiner that culture may be an issue.	Geography As Culture	Defining Culture
Not From Here	2:57	Language, ethnicity, geography, race or someone else identified a cultural difference. Obviousness is important.	Geography As Culture	Defining Culture
Not From Here	3:8	Again, he appeared unclear about how many people from different cultures he actually evaluates. Conflated culture with geography	Geography As Culture	Defining Culture
Not From Here	5:41	Acknowledgement that culture should always be considered... the examiner relies on language and native country as flags for identifying cultural differences.	Geography As Culture	Defining Culture
Not From Here	6:23	Limited exposure to US Legal System can be a big factor in how a defendant conceptualizes themes like Justice, Crime, Punishment, Judgement, etc.	Geography As Culture	Defining Culture
Not From Here	6:24		Geography As Culture	Defining Culture
Not From Here	6:38		Geography As Culture	Defining Culture
Other Countries of Origin	9:15	A lot of experience with people from all over the world, this stands out as unusual for other examiners.	Geography As Culture	Defining Culture
Geographical Sameness	1:90	Shared ethnicity. Confounded culture and ethnicity with geographical sameness.	Geography As Culture	Defining Culture
Geographical Sameness	3:93	A normalization of loss of cultural identity due to colonization.	Geography As Culture	Defining Culture
Difference of the Other	1:52	Where the defendant is from may be an indicator to the examiner that culture may be an issue.	Religion As Culture	Defining Culture
Difference of the Other	8:20	Comparison of widely held spiritual beliefs in one culture could be misinterpreted as MI by an examiner.	Religion As Culture	Defining Culture
Religion as Culture	6:74	Examiner returned to the idea that a person's religion is the key to understanding their cultural background. This is a very Western/Evangelical Christian perspective. The examiner identified as Christian.	Religion As Culture	Defining Culture
Religion as Culture	9:75		Religion As Culture	Defining Culture
Religion as Culture	9:76	Stereotyping a group based on religious practice. While done in an educational way, still demonstrates an outsider and power perspective. Micro-Aggression	Religion As Culture	Defining Culture
Religion Apart from Culture	1:71	Why not both Culture and MI? Separated out religion... why?	Religion As Culture	Defining Culture
Religion Apart from Culture	1:72	Does it? What happens when you don't know that it's a cultural belief?	Religion As Culture	Defining Culture
Religion Apart from Culture	6:35	Examiner seems more comfortable with asking about religion than other cultural aspects.	Religion As Culture	Defining Culture
Race As Culture	1:95	Racial disparity and experience of whites in position of power and authority worked against the examiner when working with Black male.	Race As Culture	Defining Culture
Race As Culture	1:98	Other cultures... racial disparity. Confound culture and race.	Race As Culture	Defining Culture

Race As Culture	1:99	Clarification that the examiner was talking about race. Again making assumptions of the other's experience. A very judging statement... Consistent with past statements.	Race As Culture	Defining Culture
Race As Culture	4:52	"Talked at me"- defensiveness about an interaction with an Af Am Male.	Race As Culture	Defining Culture
Race As Culture	4:96	Obviousness of cultural differences was the key for the examiner to identify cultural factors in the eval.	Race As Culture	Defining Culture
Race As Culture	4:101	Power Perspective, LABLED with Thug Life, Race and Culture conflated	Race As Culture	Defining Culture
Race As Culture	8:34	Since he sees preeminately the same race/ethnicity of people, there is an assumption of sameness with regard to culture.	Race As Culture	Defining Culture
Race As Culture	8:46	Anytime we conflate a shared demography (race, ethnicity, sex, gender, sexual orientation, social class, religion, etc.) there is an implied assumption of cultural similarity.	Race As Culture	Defining Culture
Race As Culture	8:47	Examiner brought up African Americans as an example of a group he does not work with, however, he did not acknowledge the difference in race, immigration status, or culture.	Race As Culture	Defining Culture
Race As Culture	9:165	Examiner eludes that race has something to do with how white people communicate with non-whites.	Race As Culture	Defining Culture
Racial Identity	3:104	Assumes that because the defendants were female and cooperative, then there wasn't problems with her assessment with regard to culture or race.	Race As Culture	Defining Culture
Racial Differences	4:16	Identified African American people as a group that the examiner struggles to work with and blames political climate.	Race As Culture	Defining Culture
Racial Conflict	4:6	Examiner apparently struggles with owning her white privilege and looked as African American defendants as the cause of the conflict. She also blames media response as contributing to the negative interactions.	Race As Culture	Defining Culture
Racial Conflict	4:7	Identified African American men as a group that the examiner struggles to work with and blames political climate.	Race As Culture	Defining Culture
Racial Conflict	4:15	Since he sees preeminately the same race/ethnicity of people, there is an assumption of sameness with regard to culture.	Race As Culture	Defining Culture
Ethnicity as Culture	8:46	How disease or defect are defined can impact the pathologizing of culture. Ethnicity plays a role not only for the defendant, but all of the players in the court.	Ethnicity As Culture	Defining Culture
Ethnicity as Culture	9:70	Overcoming assumptions and getting to specifics of culture for the individual.	Ethnicity As Culture	Defining Culture
Ethnicity as Culture	9:115		Ethnicity As Culture	Defining Culture

Gender As Culture	1:42	Evaluator's sexual identity factored in to the evaluation.	Gender As Culture	Defining Culture
Gender Differences	4:5	Addressed evaluator's characteristics. Identified self as female and young, Identified African American men as a group that the examiner struggles to work with and blames political climate.	Gender As Culture	Defining Culture
Gender Differences	4:15	Teasing out culture from MI using a variety of ways to define culture. Interesting that time is represented through a shared event as a cultural factor.	Gender As Culture	Defining Culture
Shared Event	3:84	Everyone shared a historical event from within a specific region and group. Timeframes Impact Culture.	Time As Culture	Defining Culture
Shared Event	3:85	Examiner drew on his personal experience, but acknowledged that his experience was likely outdated. Recognized a colonial aspect to the cultural experience he had.	Time As Culture	Defining Culture
Changing Times	3:97	Examiner expanded the ides of acculturation with the introduction of social class. Implication being different cultural experiences that impact acculturation.	Time As Culture	Defining Culture
Social Class as Culture	3:91	We're more homogenous then other more socially stratified countries. Don't know if this is true, perhaps less obvious with the U.S.	Social Class As Culture	Defining Culture
Social Class as Culture	3:92	A normalization of loss of cultural identify due to colonization.	Social Class As Culture	Defining Culture
Social Class as Culture	3:93		Social Class As Culture	Defining Culture
Social Class as Culture	3:95		Social Class As Culture	Defining Culture
Social Class as Culture	3:96		Social Class As Culture	Defining Culture
Social Class as Culture	3:98	Despite his acknowledging that his opinion is likely dated, the examiner reversed and drew comparisons between the other and his experience as an American. Specifics about the interpreter is important. Time, region, social class, etc.	Social Class As Culture	Defining Culture
Social Class as Culture	9:72	Examiner drew on his personal experience, but acknowledged that his experience was likely outdated. Recognized a colonial aspect to the cultural experience he had.	Social Class As Culture	Defining Culture
Social Distinctions	3:97		Social Class As Culture	Defining Culture
Age as Culture	4:5	Identified self as female and young, Examiner was proud of the diversity of clients he has seen.	Age As Culture	Defining Culture
Age as Culture	9:16	Culture withing our culture... Issues like deaf culture as a subculture within.	Age As Culture	Defining Culture
Subcultures	5:61	Need a definition of culture	Subculture as Culture	Defining Culture
Self-Defining Culture	3:7	How disease or defect are defined can impact the pathologizing of culture. Ethnicity plays a role not only for the defendant, but all of the players in the court.	Defining Culture	Defining Culture
Immigration Status and Culture	9:70	Use of slang term to identfiy newly immigrated. "Fresh off the boat"	Enculturation v Acculturation	Defining Culture
Assimilation of Culture	3:43		Enculturation v Acculturation	Defining Culture

Assimilation of Culture	3:44	How much someone is acculturated is a factor...	Enculturation v Acculturation	Defining Culture
Assimilation of Culture	3:45	Possibly a spectrum of acculturation has been suggested.	Enculturation v Acculturation	Defining Culture
Assimilation of Culture	3:46	Individual variation impacts acculturation.	Enculturation v Acculturation	Defining Culture
Assimilation of Culture	3:48	Language is a strong component of enculturation.	Enculturation v Acculturation	Defining Culture
Assimilation of Culture	3:49	Investment in culture of origin impacts level of acculturation.	Enculturation v Acculturation	Defining Culture
Assimilation of Culture	3:50	If the expatriate community is already in place there is a greater chance for enculturation.	Enculturation v Acculturation	Defining Culture
Assimilation of Culture	3:97	Examiner drew on his personal experience, but acknowledged that his experience was likely outdated. Recognized a colonial aspect to the cultural experience he had.	Enculturation v Acculturation	Defining Culture
Assimilation of Culture	4:80	It sounds like unless cultural difference presents itself, evaluator might not ask about it.	Enculturation v Acculturation	Defining Culture
Assimilation of Culture	5:5	Variety of experiences with different defendants is important to understanding challenges of culture.	Enculturation v Acculturation	Defining Culture
Assimilation of Culture	5:24	Tend to think about culture in boxes (geography, language, race, religion...).	Enculturation v Acculturation	Defining Culture
Assimilation of Culture	5:41	Acknowledgement that culture should always be considered... the examiner relies on language and native country as flags for identifying cultural differences.	Enculturation v Acculturation	Defining Culture
Assimilation of Culture	5:76	What happens here is most important.	Enculturation v Acculturation	Defining Culture
Assimilation of Culture	6:38		Enculturation v Acculturation	Defining Culture
Individual Differences	3:47	Examiner suggests that expatriate community implies stronger enculturation.	Enculturation v Acculturation	Defining Culture
Individual Differences	9:166	Shared cultural experience is important, but the examiner also pointed out that there are individual differences as well that guide those.	Enculturation v Acculturation	Defining Culture
Enculturation v Acculturation	7:35	I was wondering about enculturation, such that how acculturated is the client? Sure, they've been here for a while, but how involved are they in mainstream American culture	Enculturation v Acculturation	Defining Culture
Enculturation v Acculturation	8:19	Used a case study to demonstrate the impact that culture can have on Dx. Referenced geographical location first and then how long the defendant was in the U.S.	Enculturation v Acculturation	Defining Culture
Time in America	3:91	Examiner expanded the ideas of acculturation with the introduction of social class. Implication being different cultural experiences that impact acculturation.	Enculturation v Acculturation	Defining Culture
Time in America	6:55	Defendant was in the US for 20 years, so she must be acculturated... but time doesn't necessarily =	Enculturation v Acculturation	Defining Culture
Time in America	6:65		Enculturation v Acculturation	Defining Culture
Time in America	9:72	Specifics about the interpreter is important. Time, region, social class, etc.	Enculturation v Acculturation	Defining Culture

Time in America	9:73	Can't make assumptions that the interpreter and defendant will be able to work together in a culturally competent way just because they look similar or share language.	Enculturation v Acculturation	Defining Culture
Globalization/Colonization	3:93	A normalization of loss of cultural identity due to colonization.	Enculturation v Acculturation	Defining Culture
Globalization/Colonization	3:97	Examiner drew on his personal experience, but acknowledged that his experience was likely outdated. Recognized a colonial aspect to the cultural experience he had.	Enculturation v Acculturation	Defining Culture
Accepted There- Not Here	4:31	The implication is now that you're in the U.S. your cultural beliefs are not valid explanations for your behavior.	Enculturation v Acculturation	Defining Culture
Different Legal System	6:23	Limited exposure to US Legal System can be a big factor in how a defendant conceptualizes themes like Justice, Crime, Punishment, Judgement, etc.	Enculturation v Acculturation	Defining Culture
Different Legal System	6:24		Enculturation v Acculturation	Defining Culture
Different Legal System	6:26		Enculturation v Acculturation	Defining Culture
Different Legal System	9:84	Differences in justice systems influence people's understanding of ours. Judging other systems with the view that ours is the best.	Enculturation v Acculturation	Defining Culture
Different Legal System	9:85	Fails to acknowledge that our own system may in fact be corrupt, or at least not fair or equal.	Enculturation v Acculturation	Defining Culture
Different Legal System	9:86	Experience and cultural differences influence opinion and how people may react to our system.	Enculturation v Acculturation	Defining Culture
Different Legal System	9:87	Ideas found in Dusky is lost on justice systems in which the individual is not expected to participate in their own defense.	Enculturation v Acculturation	Defining Culture
Different Legal System	9:88	Non-oral tradition in justice systems= difficulty in understanding testimony	Enculturation v Acculturation	Defining Culture
Different Legal System	9:91	Restoration is a misnomer. Instead we should assess capacity to learn something new, not restore something assumed to be known already. This entails overcoming origin experience and learning, not just restoring	Enculturation v Acculturation	Defining Culture
Assumption of Assimilation	6:55	Defendant was in the US for 20 years, so she must be acculturated... but time doesn't necessarily =	Enculturation v Acculturation	Defining Culture
Assumption of Assimilation	6:57	Assimilation	Enculturation v Acculturation	Defining Culture
Assumption of Assimilation	9:167	Even examiners within the same cultural group may make assumptions about a defendant that can lead to conflict. Power perspective is still important even within the group, when one of the members is the examiner.	Enculturation v Acculturation	Defining Culture

Acculturation Awareness	9:23	Awareness of diversity within different places, even if shared language, doesn't or is unable to identify specifically to one.	Enculturation v Acculturation	Defining Culture
Acculturation Awareness	9:24	Acculturated, but only to a certain point. Global citizenship is more highly valued.	Enculturation v Acculturation	Defining Culture
Acculturation Awareness	9:25	Reverted back and identified a nationality as one he identifies with. Broad cultural group. Not specific.	Enculturation v Acculturation	Defining Culture
Dimensional Process	9:29	Has worked a lot in the field and has spent time considering how culture informs competency.	Dimensional Process	Defining Culture
Dimensional Process	9:92	A second Dimension	Dimensional Process	Defining Culture
Education as Culture	9:59	Culture is impacted by education, especially when cross cultural interaction occurs.	Education as Culture	Defining Culture
Education as Culture	9:60	Education intersects with culture. What type of education? American vs non-western	Education as Culture	Defining Culture
Education as Culture	9:61	Is Education getting comingled with culture? Can not having learned a specific way of thinking influencing CST?	Education as Culture	Defining Culture
Education apart from Culture	9:117	Establishing background and context. This is informed by experience and can be a place for insight, as well as miss-steps. Seems to separate Culture from other issues.	Education as Culture	Defining Culture
Clinical Definitions	3:15	Use of the DSM professional definition of Mental Illness	Diagnostic Constraints	Systemic Constraints
Uncertainty	2:31	Trying to establish a best practice. Trying to limit examiner's initial bias. However may be unprepared for cultural differences.	Unknown Best Practice	Systemic Constraints
Uncertainty	2:32	Not how I usually do it. No standardized way to conduct the CST eval.	Unknown Best Practice	Systemic Constraints
Uncertainty	2:61	Not sure how it impacts. Uncertainty around culture.	Unknown Best Practice	Systemic Constraints
Uncertainty	2:64	Uncertainty and lack of comfort with needed to accommodate cultural/language issues	Unknown Best Practice	Systemic Constraints
Uncertainty	3:22	Don't know what you don't know	Unknown Best Practice	Systemic Constraints
Uncertainty	3:26	Recognized that there is a lot of nuance within the primary culture. Self-Deprecating comment that should do more.	Unknown Best Practice	Systemic Constraints
Uncertainty	3:33	Is what we do good enough? Acknowledgement that we miss things.	Unknown Best Practice	Systemic Constraints
Uncertainty	3:108	In the training the examiner attended, he stated that even the instructor didn't know what the best practice was.	Unknown Best Practice	Systemic Constraints
Uncertainty	3:109	Examiner stated that the idea of a best practice for culturally aware forensics is "INCHOATE."	Unknown Best Practice	Systemic Constraints
Uncertainty	3:39	Again self-deprecating. Suggesting that he could pay more attention to Culture or MI.	Unknown Best Practice	Systemic Constraints

Uncertainty	4:38	The examiner suggested that she is not the only one who is uncertain about how to work with cases where cultural differences present.	Unknown Best Practice	Systemic Constraints
Uncertainty	4:40	Examiner seems at a loss as far as how to approach culture. A sense of second guessing the work and decisions/conclusions.	Unknown Best Practice	Systemic Constraints
Uncertainty	4:72	Culture is important and should be considered with every case, but unsure of how.	Unknown Best Practice	Systemic Constraints
Uncertainty	4:99	Examiner became frustrated with the evaluation, didn't know how to progress once her clinical skill attempt at reflection failed, and ultimately gave up.	Unknown Best Practice	Systemic Constraints
Uncertainty	4:103	Examiner tried to explain that she feels that she is usually able to establish rapport with defendants, but in this case he wasn't willing to accept it. Note: Examiner feels she is trying to "protect" the defendant... this is a very paternal/power perspective.	Unknown Best Practice	Systemic Constraints
Uncertainty	4:106	Assumed that it was individual and not culturally related. {Would you describe this as a culturally bound (clarifying question)}	Unknown Best Practice	Systemic Constraints
Uncertainty	4:116	Examiner is concerned that she has been told to consider culture in her evals, but given no direction or training to do it. So, has there been a lack of opportunity for training?	Unknown Best Practice	Systemic Constraints
Uncertainty	4:127	Unless we have outside consultation to help make a choice, the system will fail defendants. But if the interpreter doesn't know the culture then relying on the resource is detrimental.	Unknown Best Practice	Systemic Constraints
Uncertainty	5:37	Is identifying the culture something that you are able to do prior to meeting the person?	Unknown Best Practice	Systemic Constraints
Uncertainty	5:51	Critical question of is there enough information and how to get it.	Unknown Best Practice	Systemic Constraints
Uncertainty	6:10	Culture is important but not sure how...	Unknown Best Practice	Systemic Constraints
Uncertainty	6:33	What usually triggers that you may need to consider cultural factors a little more in a particular case?	Unknown Best Practice	Systemic Constraints
Uncertain of Realistic to Consider Culture	7:43	Reversed back to should be every case.	Unknown Best Practice	Systemic Constraints
Unknown Best Practices	3:34	"Don't know what you don't know"	Unknown Best Practice	Systemic Constraints
Unknown Best Practices	8:38	Have to force measures to fit the need.	Unknown Best Practice	Systemic Constraints
Unknown Best Practices	8:71	Culture is important and he's glad someone's doing something about it. Wants the guidance, but there is a sense that the topic may be overwhelming.	Unknown Best Practice	Systemic Constraints
Unknown Best Practices	9:66	Non-standard CST across states and fed. Different expectations. No best practice?	Unknown Best Practice	Systemic Constraints
Lack of Direction	4:113		Unknown Best Practice	Systemic Constraints
Confusion	2:40	Addressing individual needs as with any evaluation	Unknown Best Practice	Systemic Constraints

		A sense of confusion or apprehension around other cultures and how to interact with a defendant from another culture.		
Confusion	2:41		Unknown Best Practice	Systemic Constraints
Confusion	2:42	Relying on sense of what is culturally different.	Unknown Best Practice	Systemic Constraints
		Uncertainty around culture, how important is culture on CST?	Unknown Best Practice	Systemic Constraints
Confusion	2:46		Unknown Best Practice	Systemic Constraints
Confusion	2:61	Not sure how it impacts. Uncertainty around culture. Tried to recount the Sisouvanh case, and barely recalled the training he recently attended. Was told to adhere to accpeted standards of cultural awareness.	Unknown Best Practice	Systemic Constraints
Confusion	3:108	Examiner stated that the idea of a best practice for culturally aware forensics is "INCHOATE."	Unknown Best Practice	Systemic Constraints
Confusion	3:110	"All this cultural stuff... crap" Frustration of what to do. Examiner creates a Binary Choice (either the cultural difference is so extreme that it completely impacts the evaluation, or it's not). Doesn't recognize a possible spectrum.	Unknown Best Practice	Systemic Constraints
Confusion	4:33	Examiner referenced the need to use clinical skills as if they were the somehow inappropriate for use in a forensic setting.	Unknown Best Practice	Systemic Constraints
Confusion	4:58	Feels pressured to have an opinion on competency before ending the interview.	Unknown Best Practice	Systemic Constraints
Confusion	4:86	System wide problem. No one (including the attorneys) know what to do about culture.	Unknown Best Practice	Systemic Constraints
Confusion	4:117	Nervous laughter (sense of uncomfort). Reversed initial statement of case-by-case, to say that it probably should be every case.	Unknown Best Practice	Systemic Constraints
Confusion	7:41	Reversed option again	Unknown Best Practice	Systemic Constraints
Confusion	7:42	Feels pressured to have an opinion on competency before ending the interview.	Unknown Best Practice	Systemic Constraints
Pressured to have an opinion	4:86	Will second guess self if did not review chart notes before the interview. But is inconsistent on how she apporaches history or ward notes. Feels that she must have an opinion before she leaves the interview.	Unknown Best Practice	Systemic Constraints
Pressured to have an opinion	4:91	Examiner feels very stressed out about her process. Seems to have a method for how he addresses culture, but it's proprietary and not necessarily a best practice.	Unknown Best Practice	Systemic Constraints
Proprietary Method	3:76	Relying on a sense of what the report would require. Doesn't seem to have a specific method for approaching the evaluation.	Unknown Best Practice	Systemic Constraints
Proprietary Method	4:87	Examiner has had experience with defendants of different cultures, and suggests that you have to separate out cultural bound bx. Have to look at different "levels."	Unknown Best Practice	Systemic Constraints
Proprietary Method	5:19		Unknown Best Practice	Systemic Constraints

Proprietary Method	5:20	If the examiner can't sort out what is culturally bound on his own, then seek consultation.	Unknown Best Practice	Systemic Constraints
Proprietary Method	5:37	Is identifying the culture something that you are able to do prior to meeting the person?	Unknown Best Practice	Systemic Constraints
Proprietary Method	6:32		Unknown Best Practice	Systemic Constraints
Proprietary Method	6:34		Unknown Best Practice	Systemic Constraints
Proprietary Method	9:123	Subjective approach. Satisfactory is an ambiguous term and can vary significantly from person to person.	Unknown Best Practice	Systemic Constraints
Proprietary Method	9:124	Question seeking until the examiner thinks he has enough information to form an opinion.	Unknown Best Practice	Systemic Constraints
Proprietary Method	9:125	Each individual requires a different approach based on their circumstances. Educating... using what method? Language? How is this done?	Unknown Best Practice	Systemic Constraints
Proprietary Method	9:127	Bilingual could indicate assumption of acculturation. Language and culture get conflated or confused?	Unknown Best Practice	Systemic Constraints
Proprietary Method	9:135	Education in the legal system. Education and understanding are very cultural, but the examiner here speaks of the need to educate the defendant.	Unknown Best Practice	Systemic Constraints
Proprietary Method	9:142	The Examiner is not talking about culture. He instead is discussing nuance of degrees of competency.	Unknown Best Practice	Systemic Constraints
Seeking Guidance	8:65	A sense that he is looking for guidance, trying to escape the aloneness. Focused on a presentation he saw. No specifics, but he remembered he liked it.	Unknown Best Practice	Systemic Constraints
No Specific Protocol	8:66	Again, not sure what to do, should do something, but not sure what.	Unknown Best Practice	Systemic Constraints
Follow Protocols	8:56	Saves info for later, try to avoid bias. A Follow-up proprietary protocol.	Unknown Best Practice	Systemic Constraints
Different Processes	7:45	Not everyone does the same thing. For this examiner identifying information in the discovery is what tips off a possible culture issue.	Unknown Best Practice	Systemic Constraints
Different Processes	9:96	Piecemeal and not something that is applied equally across jurisdictions. Leading to confusion and unfair application. Could also lead to a pathologizing of culture.	Unknown Best Practice	Systemic Constraints
Different Processes	9:98	Deportation and access to consulate are not routinely addressed in competency evals.	Unknown Best Practice	Systemic Constraints
Wasting Time	1:14	Annoyance with waiting for interpreter of unusual language for the region.	Time Constraints	Systemic Constraints
Wasting Time	1:54	Curiosity... an openness to know about another culture. Trying to avoid mistakes... constrained by time and resources to try again... Here, we have a positive for accommodating culture... She's trying to know before making an error.	Time Constraints	Systemic Constraints

Wasting Time	1:76	Only if it comes up? How does it not come up? This statement discounts the importance of culture. Doesn't know what she doesn't know.	Time Constraints	Systemic Constraints
Need to Proceed	1:62	Need to get the eval done with as few issues as possible. Everyone is just pushed through. Their individual circumstances and culture are ignored. Systemic Ignorance and Systemic Constraints are tied with	Time Constraints	Systemic Constraints
Time Limits	2:95	Microaggression Mechanics. Important for establishing competency and for treatment/restoration. The status quo of restoration programs may not work for immigrants or non-mainstream defendants	Time Constraints	Systemic Constraints
Time Limits	2:96	Do you find time restraints to be problematic as an outpatient examiner?	Time Constraints	Systemic Constraints
Time Limits	6:41	Limited time for research or consultation.	Time Constraints	Systemic Constraints
Time Limits	7:13	Multiple variables here. A feeling of being overwhelmed, exasperated, confused, and concerned for reaching the correct conclusion.	Time Constraints	Systemic Constraints
Time Consuming	4:39		Time Constraints	Systemic Constraints
Time Consuming	6:40		Time Constraints	Systemic Constraints
Longer Reports	2:22	More time consuming.	Time Constraints	Systemic Constraints
Longer Reports	2:27	Harder than "usual"	Time Constraints	Systemic Constraints
Report Time Pressure	4:92	Time isn't a problem for the interview according to the examiner, however there is pressure to get the report done quickly. Maybe this is why she feels pressured to have a definitive opinion before the interview is over. What is better? Knowing ahead of time, or finding out later? Examiner didn't have access to the information before getting the case.	Time Constraints	Systemic Constraints
Walk-In & Find-Out	6:21	This is an area of contention among examiners. Some don't get the info ahead of time. Regardless it appears that questions come up that need research even if the examiner did research ahead of time.	Limited Information	Systemic Constraints
Walk-In & Find-Out	9:105	There is no clear particulars on what to do to assist someone who may need an accommodation. Again, the accommodations under the ADA however do not apply directly to culture. May have to pathologize culture, to get ADA benefits.	Limited Information	Systemic Constraints
Accommodating Needs	9:139		Appropriateness of Tools	Systemic Constraints
Lack of Resources	1:15	Scarcity of resources for language interpretation.	Appropriateness of Tools	Systemic Constraints
Lack of Resources	1:17	Annoyance with interpreter not giving accurate info Are these the same code?	Appropriateness of Tools	Systemic Constraints
Lack of Resources	4:18	Lack of interpreters for restoration training for the defendants.	Appropriateness of Tools	Systemic Constraints
Lack of Resources	4:19	Defendants are unable to become restored because we fail to provide appropriate interpreters.	Appropriateness of Tools	Systemic Constraints

Lack of Resources	7:12	Need to do own research due to lack of cultural consultation.	Appropriateness of Tools	Systemic Constraints
Lack of Resources	7:14	Limited number of experts to consult with. Need a checklist... relying on experience with other cultures to develop a checklist, not specific to culture of defendant.	Appropriateness of Tools	Systemic Constraints
Lack of Resources	7:15	Use what resources I have, goes on to discuss probable limitations of cultural resources.	Appropriateness of Tools	Systemic Constraints
Lack of Resources	7:27	Not sure what to do. No guidance or best practice.	Appropriateness of Tools	Systemic Constraints
Lack of Resources	8:37	Have to force measures to fit the need.	Appropriateness of Tools	Systemic Constraints
Lack of Resources	8:38	Have to force measures to fit the need. By overlaying the experience and not accounting for it in the assessment, we assume no effect of culture.	Appropriateness of Tools	Systemic Constraints
Lack of Resources	8:39	A sense of aloneness due to systemic failure. Need for consultation not mentioned in this statement.	Appropriateness of Tools	Systemic Constraints
Lack of Resources	8:40	Complete records are not always available before the interview.	Appropriateness of Tools	Systemic Constraints
Lack of Resources	9:112	Personal opinion of how the law should be interpreted by examiners.	Appropriateness of Tools	Systemic Constraints
Lack of Resources	9:129	Tried to recount the Sisouvanh case, and barely recalled the training he recently attended. Was told to adhere to accepted standards of cultural awareness.	Appropriateness of Tools	Systemic Constraints
Insufficient Training	3:108	It's important to self-reflect and be self-aware, but the quality of this may be very dependent on grad school or other training.	Appropriateness of Tools	Systemic Constraints
Quality of Training	7:60	Forced to complete CEU's for licensure in another state.	Appropriateness of Tools	Systemic Constraints
Req'd Cultural Competency Training	6:47	Unclear if the examiner feels the training is sufficient.	Appropriateness of Tools	Systemic Constraints
		Examiner is concerned that she has been told to consider culture in her evals, but given no direction or training to do it. So, has there been a lack of opportunity for training?		
Lack of Training	4:116	Examiner identified that psychologist with a similar background to a defendant only is an advantage if he also has cultural competency training.	Appropriateness of Tools	Systemic Constraints
Lack of Training	9:155	Cultural nuance is not the same as simply knowing the language. Language is an advantage however.	Appropriateness of Tools	Systemic Constraints
Lack of Training	9:156	Like with language, not all examiners know how to appropriately use assessments cross-culturally, even if the examiner shares a similar background to the examinee.	Appropriateness of Tools	Systemic Constraints
Lack of Training	9:157	Critical question of is there enough information and how to get it.	Appropriateness of Tools	Systemic Constraints
Not enough Information	5:51	Is a class in multicultural sensitivity enough? What did the course entail? Awareness of larger issues?	Appropriateness of Tools	Systemic Constraints
Took multicultural training	8:11		Appropriateness of Tools	Systemic Constraints

Specialized Training	9:148	This examiner's personal experience placed his values on being global. This influences the way he sees his clients.	Appropriateness of Tools	Systemic Constraints
Specialized Training	9:149		Appropriateness of Tools	Systemic Constraints
Unreliable Interpreter	1:18	Felt like couldn't trust the interpreter. Barrier to the evaluation. Translate v Interpret	Appropriateness of Tools	Systemic Constraints
Unreliable Interpreter	1:22	Where they're from matters. Location, location, location. Professionalism and reliability of translation might be lacking.	Appropriateness of Tools	Systemic Constraints
Unreliable Interpreter	1:23		Appropriateness of Tools	Systemic Constraints
Unreliable Interpreter	1:24	Get in the way. We need them, but can we trust them? Challenge with interpreters not doing literal translation.	Appropriateness of Tools	Systemic Constraints
Unreliable Interpreter	2:63	Need to train them in order to achieve objective..	Appropriateness of Tools	Systemic Constraints
Unreliable Interpreter	4:10	"Interpreters are just horrible" Strong statement.	Appropriateness of Tools	Systemic Constraints
Unreliable Interpreter	4:11	Examiner is apparently very frustrated with the lack of professional/competency of interpreters.	Appropriateness of Tools	Systemic Constraints
Unreliable Interpreter	6:66	Interpreter refused to relay message from the examiner to the defendant! How often does this occur? How often does it occur without the examiner even knowing?	Appropriateness of Tools	Systemic Constraints
Unreliable Interpreter	6:67		Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	1:44	Unable to have a male evaluator---> Created conflict.	Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	4:119	Does the culture of the interpreter matter? Interpreters need to know the culture as well as the language.	Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	4:120		Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	4:123		Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	4:124	If the interpreter doesn't translate word for word, and instead makes it make sense, then it presents wrong information. Sameness of the interpreter is critical for accurate interpretation of the culture, not just translation of the language.	Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	4:125		Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	5:28		Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	5:31	Without specific direction, interpreters do different things- the way they think it should, paraphrasing, making it make sense..	Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	5:32	Differentiating between translation and interpretation. Would prefer word for word translation. Settles for competent interpretation.	Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	5:33	Unfiltered translation and is familiar with psychological terms. This assumes that there is a word of similar meaning for the term.	Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	5:34		Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	5:66		Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	5:67	Never know how reliable the information is. This feeds the reasonable vs. right argument.	Appropriateness of Tools	Systemic Constraints

Limits of the Interpreter	9:31	Interpreters assume a critical function. Have to work with them. Complicated relationship and dependant on the criminal justice system process.	Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	9:47	Misunderstandings occur frequently by just using an interpreter.	Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	9:48	Limitations of interpreters by the court. Interpreters are not allowed to interpret, they translate in US courts.	Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	9:50	Interpreters recognize that multicultural defendants are being misunderstood.	Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	9:52	How competent are professionals in making judgement calls on a defendant's competency, when language and culture are misunderstood by those who know the least about them.	Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	9:72	Specifics about the interpreter is important. Time, region, social class, etc.	Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	9:172	The court assumes that language is the same as culture, and doesn't parse it out. Interpreter's may actually know this, but are limited by the system to do anything about it.	Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	9:176	Good idea to speak to the interpreter ahead of time. The examiner changed the term from interpreter to translator here.	Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	9:177	Provides a sort of contradictory position. Wants a verbatim translation, but expects the translator to know if the examiner is not catching cultural nuance. Examiner feels it is important to direct the interpreter as to how something is to be translated so that it can be considered in the examination.	Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	9:179	Interpreters for the court are expected to do a variety of jobs with specific directive, however disorganized thinking is not typically something they have to deal with.	Appropriateness of Tools	Systemic Constraints
Limits of the Interpreter	9:180	Examiner is apparently very frustrated with the lack of professional/competency of interpreters.	Appropriateness of Tools	Systemic Constraints
Interpreter's limited	4:11	Exasperation with interpreters is worse with regard to use of language and court terminology. (Look into interpreter roles and impact on understanding)	Appropriateness of Tools	Systemic Constraints
Interpreter's limited	4:12	Here the examiner continues to identify problems she has had with interpreters and then blames them for not understanding what the examiner needs from them.	Appropriateness of Tools	Systemic Constraints
Interpreter's limited	4:13	Examiner continues to bounce back and forth between identifying racial groups and struggles with language difference. Possible narrow definition of what culture is.	Appropriateness of Tools	Systemic Constraints
Interpreter's limited	4:17	Identified a need for "Qualified" Interpreters.	Appropriateness of Tools	Systemic Constraints
Professionalism of Interpreter	6:62	Here the translator was a positive experience, why?	Appropriateness of Tools	Systemic Constraints

Professionalism of Interpreter	9:51	How broadly should interpreters be permitted to influence what is being said?	Appropriateness of Tools	Systemic Constraints
Professionalism of Interpreter	9:77	How do you handle an clear cultural conflict between two groups. Failure to note that this could be an issue, can you address it at onset?	Appropriateness of Tools	Systemic Constraints
Professionalism of Interpreter	9:113	Professionalism of the interpreter seems to matter. Workplace/colleagues, and training where culture has been identified. But does the examiner have a clear practice of addressing culture? A sense of I'm trained, so I'm good now, it's something for other examiners to discuss.	Appropriateness of Tools	Systemic Constraints
Continuing Education	5:56	Evaluator is a Non-native speaker of another language and does evals in the language. Is culture captured in translation?	Appropriateness of Tools	Systemic Constraints
Self-Interpreter	9:11	Again, non-native speaker. Is culture captured in translation? Specifically looks for	Appropriateness of Tools	Systemic Constraints
Self-Interpreter	9:14	Examiner was proud of the diversity of clients he has seen.	Appropriateness of Tools	Systemic Constraints
Self-Interpreter	9:16	Late learner of Spanish. Emersion, to what degree? How does later exposure to a language impact undersanding of cultural nuance?	Appropriateness of Tools	Systemic Constraints
Culturally Insensitive Assessments	9:122	Attempting to utilize tools that are culturally appropriate.	Appropriateness of Tools	Systemic Constraints
Culturally Insensitive Assessments	9:173	Simply cannot translate an assessment instrument and assume it will work appropriately.	Appropriateness of Tools	Systemic Constraints
Limits of Assessments	9:120	Utilizing a informant to correlate findings from the test measures chosen. Tests, that may or may not be culturally appropriate.	Appropriateness of Tools	Systemic Constraints
Limits of Assessments	9:182	Noise in the data when using a tool that has not been culturally normed.	Appropriateness of Tools	Systemic Constraints
Selecting Assessments	9:107	Language was identified as major issue, but not acculturation...	Appropriateness of Tools	Systemic Constraints
Selecting Assessments	9:181	The examiner suggests that the assessment should produce useful information for the court above all else.	Appropriateness of Tools	Systemic Constraints
Defaulting to Clinical Skills	4:58	Examiner referenced the need to use clinical skills as if they were the somehow inappropriate for use in a forensic setting.	Limits of the Examiner	Systemic Constraints
Defaulting to Clinical Skills	4:59	First states a need to use therapy skills and then describes them as "weird."	Limits of the Examiner	Systemic Constraints
Defaulting to Clinical Skills	4:63	Use of clinical skills to navigate a difficult interview. Used "reflection", but I wonder if it worked given the racial difference between the examiner and defendant.	Limits of the Examiner	Systemic Constraints

		Examiner has expressed frustration about struggles with defendants who fell persecuted by the system. Again is devaluing the experience.		
Defaulting to Clinical Skills	4:64		Limits of the Examiner	Systemic Constraints
Defaulting to Clinical Skills	4:97		Limits of the Examiner	Systemic Constraints
		Examiner became frustrated with the evaluation, didn't know how to progress once her clinical skill attempt at reflection failed, and ultimately gave up.	Limits of the Examiner	Systemic Constraints
Defaulting to Clinical Skills	4:99	Examiner gave up trying to connect with the defendant.	Limits of the Examiner	Systemic Constraints
Defaulting to Clinical Skills	4:102	Examiner tried to explain that she feels that she is usually able to establish rapport with defendants, but in this case he wasn't willing to accept it. Note: Examiner feels she is trying to "protect" the defendant... this is a very paternal/power perspective.	Limits of the Examiner	Systemic Constraints
Defaulting to Clinical Skills	4:103	Rapport building is critical as with any interview	Limits of the Examiner	Systemic Constraints
Defaulting to Clinical Skills	9:114	It's important to remember that examiners are part of the criminal justice system and are just as likely to impose oppressive actions. Power differential between examiners and interpreters as well as with the defendant.		
Examiners Power Over Interpreters	9:175	Determines if competent to take the case.	Limits of the Examiner	Systemic Constraints
Examiner lacks competency	9:102		Limits of the Examiner	Systemic Constraints
Language Gap	4:118		Limits of the Examiner	Systemic Constraints
Recognizing limits of translation	9:42	Language in context. Assuring the def understands, not just hears.	Limits of the Examiner	Systemic Constraints
Recognizing limits of translation	9:43	Pragmatics and nature of communication is complex. Australia has been trying to address this.	Limits of the Examiner	Systemic Constraints
		How competent are professionals in making judgement calls on a defendant's competency, when language and culture are misunderstood by those who know the least about them.		
Recognizing limits of translation	9:52	Assuring that the def has what is needed to have a fair opportunity toward competency and trial.	Limits of the Examiner	Systemic Constraints
Fail to Use Resources	9:41	How do you handle an clear cultural conflict between two groups. Failure to note that this could be an issue, can you address it at onset?	Limits of the Examiner	Systemic Constraints
Powerless to Intervene	9:77	Ignorance/defending examiner's perspectives.	Limits of the Examiner	Systemic Constraints
Not recognizing system limits	9:82	Psychologist need to be consider culture. The examiner described himself as working almost exclusively with multicultural clients, but now identifies as a cultural generalist. Examiner may be struggling with his desire to focus on culture, and the legal system ignoring it.	Limits of the Examiner	Systemic Constraints
Defining Examiner Role	9:144	Psychology requires that we understand what it is to be human: emotion and cognition makes up what it is to be human.	Limits of the Examiner	Systemic Constraints
Defining Examiner Role	9:145		Limits of the Examiner	Systemic Constraints

Directing the Interpreter	9:176	Good idea to speak to the interpreter ahead of time. The examiner changed the term from interpreter to translator here.	Limits of the Examiner	Systemic Constraints
Directing the Interpreter	9:177	Provides a sort of contradictory position. Wants a verbatim translation, but expects the translator to know if the examiner is not catching cultural nuance. Examiner feels it is important to direct the interpreter as to how something is to be translated so that it can be considered in the examination.	Limits of the Examiner	Systemic Constraints
Directing the Interpreter	9:179	Examiner is of the opinion that most examiners don't tell interpreters that it is okay for them to speak up.	Limits of the Examiner	Systemic Constraints
Fail to Empower	9:178	Deportation and access to consulate are not routinely addressed in competency evals.	Limits of the System	Systemic Constraints
Inconsistent Processes	9:98	Jurisdictional difference? Different state laws? Lack of Best Practice?	Limits of the System	Systemic Constraints
Inconsistent Practices	9:128	State examiners lack the ability to refer a case. Have to do a case even if not competent to take it.	Limits of the System	Systemic Constraints
Private v Public Practice	9:103	Expectations of the court. Assumptions about what is expected. Many reasons why not meeting competency standard.	Limits of the System	Systemic Constraints
Failure of Defense Attorney	9:65	Deportation and citizenship status is an added risk not faced by non-immigrant defendants, and whether they are allowed consulate assistance. Very Political.	Limits of the System	Systemic Constraints
Deportation Risks	9:94	Deportation and citizenship status is an added risk not faced by non-immigrant defendants, and whether they are allowed consulate assistance. Very Political.	Limits of the System	Systemic Constraints
Deportation Risks	9:97	Deportation and access to consulate are not routinely addressed in competency evals.	Limits of the System	Systemic Constraints
Deportation Risks	9:98	Don't know what you don't know. Trusting in appearance that culture may or may not play a role, but acknowledged that culture is important.	Limits of the System	Systemic Constraints
Legal Constraints	1:28	Culture and mental illness have to intertwined. Does not take into account how MI might look in a diff culture.	Legal Constraints	Systemic Constraints
Legal Constraints	1:67	Expectations of the court. Assumptions about what is expected. Many reasons why not meeting competency standard.	Legal Constraints	Systemic Constraints
Legal Constraints	9:65	There is a false idea that we have to give testimony and oral debate in US courts. This is required for due process and CST, but in fact this is not required in the vast majority of cases where pleabargains are the deciding outcome.	Legal Constraints	Systemic Constraints
Legal Constraints	9:89	Fiction of the oral tradition. Formal competency vs reality of plea bargains and no actual trials. So we are assessing for competency in something that is highly unlikely to occur.	Legal Constraints	Systemic Constraints
Legal Constraints	9:90		Legal Constraints	Systemic Constraints

Legal Constraints	9:95	Very Political. Not the main focus of the evaluation and unsure how it impacts the outcome for the defendants. Not covered by Dusky or state law.	Legal Constraints	Systemic Constraints
Legal Definitions	1:68	Legal code standard. Up till now has largely ignored culture. MENTAL ILLNESS TRUMPS CULTURE.	Legal Constraints	Systemic Constraints
Legal Definitions	3:14	Use of the legal precedent. Sets a boundary/benchmark for the examiner.	Legal Constraints	Systemic Constraints
Legal Definitions	3:36	The implication being that the Dusky Standard is the ultimate decision maker and won't be changed.	Legal Constraints	Systemic Constraints
Legal Definitions	5:8	Without a Dx, can't be incompetent.	Legal Constraints	Systemic Constraints
Legal Definitions	5:77	Examiner places the responsibility of competency on the defedent. B/C the Dusky standard says so.	Legal Constraints	Systemic Constraints
Legal Definitions	7:50	Competency requires knowledge that may be lacking for someone from another culture. Examiner identified this.	Legal Constraints	Systemic Constraints
Legal Definitions	7:11	The law defines competency, but must be careful with culture. Implies that culture is not considered by the law.	Legal Constraints	Systemic Constraints
Legal Definitions	7:63	Opposite of Low Bar. Here the examiner is suggesting that culture pervades all aspects of competency to stand trial.	Legal Constraints	Systemic Constraints
Legal Definitions	9:56	Complexity of the charges can influence a defendants ability to understand the crime.	Legal Constraints	Systemic Constraints
Legal Definitions	9:66	Non-standard CST across states and fed. Different expectations. No best practice?	Legal Constraints	Systemic Constraints
Legal Definitions	9:67	Dusky Standard is the basis, but it varies across states.	Legal Constraints	Systemic Constraints
Legal Definitions	9:68	Might be deflecting from culture and looking at other applications of law. May or may not be accurate or appropriate.	Legal Constraints	Systemic Constraints
Legal Definitions	9:69	Who's responsibility is it to define this? What has the case law said about it. Perhaps change should come from the Forensic Psych Field.	Legal Constraints	Systemic Constraints
Legal Definitions	9:136	Dusky as applied to Wa and Oregon	Legal Constraints	Systemic Constraints
Legal Definitions	9:137	Appying the ADA to individuals who's culture is impacting their presentation and being misinterpreted as mental illness can lead to a pathologizing of their culture.	Legal Constraints	Systemic Constraints
Legal Definitions	9:140	The law may oversimplify the issues of competency, or the way most examiners approach the question is with a basic binary choice.	Legal Constraints	Systemic Constraints
Legal Definitions	9:141	Suggestion that competency is more a spectrum than a binary choice.	Legal Constraints	Systemic Constraints
Legal Definitions	9:143	Application of the spectrum consideration of competency.	Legal Constraints	Systemic Constraints
Limits of CST	9:54	Can the same competency standards truly be equally applied across all defendants and all circumstances	Legal Constraints	Systemic Constraints

Limits of CST	9:55	Can the same competency standards truly be equally applied across all defendants and all circumstances	Legal Constraints	Systemic Constraints
Limits of CST	9:56	Complexity of the charges can influence a defendants ability to understand the crime.	Legal Constraints	Systemic Constraints
Limits of CST	9:57	Does not hold well in RCW, b/c mental disease or defect must be present. Can you shift responsibility for a defendant being competent or not, if the other actors in the CJ system are not culturally competent?	Legal Constraints	Systemic Constraints
Limits of CST	9:58	Legal arguments about CST. Again, problematic with RCW definition	Legal Constraints	Systemic Constraints
Limits of CST	9:68	Might be deflecting from culture and looking at other applications of law. May or may not be accurate or appropriate.	Legal Constraints	Systemic Constraints
Limits of CST	9:90	Fiction of the oral tradition. Formal competency vs reality of plea bargains and no actual trials. So we are assessing for competency in something that is highly unlikely to occur.	Legal Constraints	Systemic Constraints
Limits of CST	9:91	Restoration is a misnomer. Instead we should assess capacity to learn something new, not restore something assumed to be known already. This entails overcoming origin experience and learning, not just restoring	Legal Constraints	Systemic Constraints
Limits of CST	9:93	Ramifications for legal distinction. Not well documented or understood?	Legal Constraints	Systemic Constraints
Limits of CST	9:95	Very Political. Not the main focus of the evaluation and unsure how it impacts the outcome for the defendants.	Legal Constraints	Systemic Constraints
Low Bar of Competency	1:37	Not covered by Dusky or state law.	Legal Constraints	Systemic Constraints
Low Bar of Competency	1:38	It seems that where culture may be a bigger issue in the process is where the attorney is getting ready to go to trial?	Legal Constraints	Systemic Constraints
Questioned about Culture	5:45	Culture may not matter, because the bar is low.	Legal Constraints	Systemic Constraints
Questioned about Culture	5:47	System acknowledged culture! This is the first time I've had an examiner mention actually being asked about it in court. Addressed it, because was asked in court.	Legal Constraints	Systemic Constraints
Questioned about Culture	5:47	what do you think the court is asking for when they ask about culture? Court asked if examiner considered culture, but unsure of how the court views it (variable? Appearance of MI? obstacle?) Becomes important if the court asked it.	Legal Constraints	Systemic Constraints
Language & Cultural Assumptions	9:170	The system assumes that non-native speakers who have fluency in English should not need an interpreter. However, there may be a simplified vocabulary that may not be identified, and a loss of nuanced understanding.	Legal Constraints	Systemic Constraints
Unprepared	4:62	Surprised when confronting cultural differences. A lack of process to account for cultural differences	Systemic Ignorance	Systemic Constraints

System doesn't acknowledge culture	2:92	"burden" falls on the examiner	Systemic Ignorance	Systemic Constraints
System doesn't acknowledge culture	2:93	The rest of system isn't held accountable. It falls to the examiner	Systemic Ignorance	Systemic Constraints
System doesn't acknowledge culture	2:96	Important for establishing competency and for treatment/restoration. The status quo of restoration programs may not work for immigrants or non-mainstream defendants	Systemic Ignorance	Systemic Constraints
System doesn't acknowledge culture	4:19	Defendants are unable to become restored because we fail to provide appropriate interpreters. Unless we have outside consultation to help make a choice, the system will fail defendants. But if the interpreter doesn't know the culture then relying on the resource is detrimental.	Systemic Ignorance	Systemic Constraints
System doesn't acknowledge culture	4:127	There is almost no attention to the importance of culture in the CJ literature.	Systemic Ignorance	Systemic Constraints
System doesn't acknowledge culture	9:171		Systemic Ignorance	Systemic Constraints
System doesn't acknowledge culture	9:174		Systemic Ignorance	Systemic Constraints
System ignores Culture	9:35	Competency restoration is a misnomer. Pathologizes the person's culture by assuming that the def is incompetent due to their culture.	Systemic Ignorance	Systemic Constraints
System ignores Culture	9:36	Culture could be mistaken for mental illness and thereby pathologized.	Systemic Ignorance	Systemic Constraints
System doesn't screen for culture	5:13		Systemic Ignorance	Systemic Constraints
System Ignores Non-MI factors	9:38	We assume people can be restorable, but this may not be the case. Other factors may impact whether they were "competent" in the first place and not b/c of disease or defect.	Systemic Ignorance	Systemic Constraints
System Ignored MI	8:33	Case example where mental illness and likely culture were ignored.	Systemic Ignorance	Systemic Constraints
Treat all evals the same	4:84	All evaluations are to be treated the same, regardless of how busy the evaluator is. This is impossible.	Systemic Ignorance	Systemic Constraints
Treat all evals the same	4:87	Evaluations vary in time and complexity. Relying on a sense of what the report would require. Doesn't seem to have a specific method for approaching the evaluation.	Systemic Ignorance	Systemic Constraints
Apologizing for the System	2:94	Apologizing for the lack of cultural awareness this examiner feels is in the system	Systemic Ignorance	Systemic Constraints
Apologizing for the System	2:95	Everyone is just pushed through. Their individual circumstances and culture are ignored. Systemic Ignorance and Systemic Constraints are tied with Microaggression Mechanics.	Systemic Ignorance	Systemic Constraints
Deindividualization	8:33	Case example where mental illness and likely culture were ignored.	Systemic Ignorance	Systemic Constraints

Deindividualization	4:51	Here, the examiner states that she ultimately relies primarily on her opinion and personal experience.	Systemic Ignorance	Systemic Constraints
Deindividualization/Generalization	9:30	Of all the dimensions, language came up first. Possibly most salient? Or most obvious?	Systemic Ignorance	Systemic Constraints
Communication as a Barrier	9:33	Language is critical, but Defendants need access to the same materials, to provide equality and a not set the up for failure.	Systemic Ignorance	Systemic Constraints
Inequality of Language	9:33	Language is critical, but Defendants need access to the same materials, to provide equality and a not set the up for failure.	Systemic Ignorance	Systemic Constraints
Inequality of Language	9:34	Equality is key. Implication of setting the non-English speaker up for failure at multiple points in the system. May not have a concept of the trial process. Lost in translation.	Systemic Ignorance	Systemic Constraints
Inequality of Language	9:39	LOST IN TRANSLATION	Systemic Ignorance	Systemic Constraints
Inequality of Language	9:40	Assuring that the def has what is needed to have a fair opportunity toward competency and trial.	Systemic Ignorance	Systemic Constraints
Inequality of Language	9:41	Lost in translation. Terms mean different things in another language then they do in English. Role or name doesn't translate correctly or doesn't exist in native language. This is a CRITICAL component for culture.	Systemic Ignorance	Systemic Constraints
Inequality of Language	9:126	Bilingual could indicate assumption of acculturation.	Systemic Ignorance	Systemic Constraints
Inequality of Language	9:127	Language and culture get conflated or confused?	Systemic Ignorance	Systemic Constraints
Opportunities for Success	9:34	Equality is key. Implication of setting the non-English speaker up for failure at multiple points in the system.	Systemic Ignorance	Systemic Constraints
Opportunities for Success	9:41	Assuring that the def has what is needed to have a fair opportunity toward competency and trial.	Systemic Ignorance	Systemic Constraints
Opportunities for Success	9:46	Providing opportunities. Culture isnt just Language	Systemic Ignorance	Systemic Constraints
ID Impacts CST	9:63	Multiple reasons for inability to be CST	Systemic Ignorance	Systemic Constraints
ID Impacts CST	9:64	Undiagnosed. Another variable to complicate the issue.	Systemic Ignorance	Systemic Constraints
ID Impacts CST	9:68	Might be deflecting from culture and looking at other applications of law. May or may not be accurate or appropriate.	Systemic Ignorance	Systemic Constraints
Unspoken Issues	9:78	Subtle issues that cause cultural conflict. Is it inability, unwillingness, ignorance, and/or fear that leads the examiner from addressing the conflict?	Systemic Ignorance	Systemic Constraints
Court Perceived Bias	9:158	Catch 22- if the examiner is of the same culture, there is a chance that the court may assume bias on part of the examiner.	Systemic Ignorance	Systemic Constraints
Assumption of Understanding	9:170	The system assumes that non-native speakers who have fluency in English should not need an interpreter. However, there may be a simplified vocabulary that may not be identified, and a loss of nuanced understanding.	Systemic Assumption	Systemic Constraints

Competency concerns Psychosis	9:38	Examiner stated that 90% of competency evals involved psychosis. Is this an exaggeration? Are examiners looking for psychosis? Is it demanded because of the need to prove MI to be incompetent?	Systemic Assumption	Systemic Constraints
Defining Education	9:61	Is Education getting comingled with culture? Could not having learned a specific way of thinking influencing CST?	Systemic Assumption	Systemic Constraints
Educational Advantage	9:62	Able to acquire skills despite formal education. Education may not dictate competency. More education may give advantage- inequality.	Systemic Assumption	Systemic Constraints
Cognition Informs Competency	9:118	Clarification that the clinical interview occurs first. This should inform the testing measures used are appropriate to the individual situation and background.	Cognition and Competency	Systemic Constraints
Review of Prior Examiner's Work	6:51	The defendant's hx was known to the examiner. How does this impact the evaluation, other than preparation? Preconceived or bias opinion?	Need for Consultation	Reliance on Others
Relying on Cultural Authority	5:36	Examiner doesn't consider that a translator/interpreter can be a source of cultural authority.	Need for Consultation	Reliance on Others
Relying on Cultural Authority	9:120	Utilizing a informant to correlate findings from the test measures chosen. Tests, that may or may not be culturally appropriate.	Need for Consultation	Reliance on Others
Relying on Cultural Authority	5:40	There is a difference between relying on someone else for consultation and trying to shift the responsibility of making a decision on to someone else. Here the examiner recognizes that they lack competency and seek consultation.	Need for Consultation	Reliance on Others
Relying on Cultural Authority	5:62	Language is translated and the cultural meaning behind the language is then interpreted. Draws distinction between translation and interpretation.	Need for Consultation	Reliance on Others
Relying on Cultural Authority	5:65	Translating Culture.	Need for Consultation	Reliance on Others
Relying on Cultural Authority	4:50	Although the examiner is talking with others, there is a feeling that little consultation is occurring and rather is looking for confirmation.	Need for Consultation	Reliance on Others
Relying on Cultural Authority	9:103	State examiners lack the ability to refer a case. Have to do a case even if not competent to take it.	Need for Consultation	Reliance on Others
Relying on Cultural Authority	9:104	Access to resources is key. Who do evaluators consult with? Is it enough? How much of expert do you have to be?	Need for Consultation	Reliance on Others
Consultation with Other Examiners	5:57	A sense of wanting to get past culture and on to the "real issues."	Need for Consultation	Reliance on Others
Consultation with Other Examiners	8:31	A sense of being alone. Doesn't address consultation due to systemic failure.	Need for Consultation	Reliance on Others
On Your Own	8:40	A sense of aloneness due to systemic failure. Need for consultation not mentioned in this statement.	Need for Consultation	Reliance on Others

		To what degree does the examiner rely on others, and what degree is he taking the initiative to find the answers, and needs consultation to do so? The sense is that this is a nuisance for the examiner.		
On Your Own	5:68		Need for Consultation	Reliance on Others
Relying on Others	2:18	Acknowledges a lack of knowledge and understanding	Need for Consultation	Reliance on Others
		Cases where culture obviously plays a role are harder.		
Need Consultation	2:20	Potentially more time consuming as well.	Need for Consultation	Reliance on Others
Need Consultation	3:55		Need for Consultation	Reliance on Others
Need Consultation	4:18		Need for Consultation	Reliance on Others
		If the examiner can't sort out what is culturally bound on his own, then seek consultation.	Need for Consultation	Reliance on Others
Need Consultation	5:20	Need a checklist... relying on experience with other cultures to develop a checklist, not specific to culture of defendant.	Need for Consultation	Reliance on Others
Need Consultation	7:15	Need to consult, but it's usually not specific to the culture you are evaluating.	Need for Consultation	Reliance on Others
Need Consultation	7:16	Self-awareness requires consultation?	Need for Consultation	Reliance on Others
Need Consultation	7:59	More time consuming, more steps, no specific direction other than consultation	Need for Consultation	Reliance on Others
Need Consultation	2:21	Here, the examiner says she requires consultation before she is comfortable with her decision. Seems very conflicted and uncertain.	Need for Consultation	Reliance on Others
Relying on Other Examiners	4:53		Need for Consultation	Reliance on Others
Relying on Other Examiners	6:10	Culture is important but not sure how...	Need for Consultation	Reliance on Others
		Using the internet alone or with minimal consultation could be problematic. What internet resources are being used?		
Relying on Other Examiners	6:18	Training is done in house on cultural competency.	Need for Consultation	Reliance on Others
Relying on Other Examiners	6:46	Even though the examiner had read and relied on prior evaluations, still need to seek consultation afterward. This is a complicated process and suggests that he may have had preconceived notions of competence that were challenged in the interview.	Need for Consultation	Reliance on Others
Relying on Other Examiners	6:58	Used "kind of" experts- uncertainty of how "expert" it is when consulting with in house colleagues.	Need for Consultation	Reliance on Others
Relying on Other Examiners	7:30	Teasing out culture from MI using a variety of ways to define culture. Interesting that time is represented through a shared event as a cultural factor.	Need for Consultation	Reliance on Others
Relying on Interpreters	3:84	Consulted with Interpreter to not only translate, but whether the Language is normalized (cultural) or delusional. Shifting responsibility? Seeking consultation? Is this appropriate. Recognizes a need for consultation.	Need for Consultation	Reliance on Others
Relying on Interpreters	1:10	More time consuming, more steps, no specific direction other than consultation	Need for Consultation	Reliance on Others
Relying on Interpreters	2:21		Need for Consultation	Reliance on Others

Relying on Interpreters	3:86	Would you have known to ask about that if it hadn't been for the interpreter? Interpreter was relied on to determine what was "normal" for the individual's culture given location, time, and experience vs. what the individual was demonstrating.	Need for Consultation	Reliance on Others
Relying on Interpreters	3:87		Need for Consultation	Reliance on Others
Relying on Interpreters	4:29	Even though the interpreter who is from the same culture says it's culturally valid, the examiner doubts veracity. Default to the opinion of the interpreter. Is the defendant "crazy or is this cultural."	Need for Consultation	Reliance on Others
Relying on Interpreters	4:121	Word for word translation is important and would be appreciated by the examiner.	Need for Consultation	Reliance on Others
Relying on Interpreters	4:122		Need for Consultation	Reliance on Others
Relying on Interpreters	4:123		Need for Consultation	Reliance on Others
Relying on Interpreters	4:124	If the interpreter doesn't translate word for word, and instead makes it make sense, then it presents wrong information. Sameness of the interpreter is critical for accurate interpretation of the culture, not just translation of the language.	Need for Consultation	Reliance on Others
Relying on Interpreters	4:125	Interpreter should know the language and the culture	Need for Consultation	Reliance on Others
Relying on Interpreters	5:25		Need for Consultation	Reliance on Others
Relying on Interpreters	5:29		Need for Consultation	Reliance on Others
Relying on Interpreters	5:30		Need for Consultation	Reliance on Others
Relying on Interpreters	5:31	Without specific direction, interpreters do different things- the way they think it should, paraphrasing, making it make sense...	Need for Consultation	Reliance on Others
Relying on Interpreters	5:32	Differentiating between translation and interpretation. Would prefer word for word translation. Settles for competent interpretation.	Need for Consultation	Reliance on Others
Relying on Interpreters	5:33	Language is translated and the cultural meaning behind the language is then interpreted. Draws distinction between translation and interpretation.	Need for Consultation	Reliance on Others
Relying on Interpreters	5:62	Translating Culture.	Need for Consultation	Reliance on Others
Relying on Interpreters	5:65	Here the translator was a positive experience, why?	Need for Consultation	Reliance on Others
Relying on Interpreters	6:62		Need for Consultation	Reliance on Others
Relying on Interpreters	6:63		Need for Consultation	Reliance on Others
Relying on Interpreters	9:12	Uses translators if not in English or Spanish Interpreters assume a critical function. Have to work with them. Complicated relationship and dependant on the criminal justice system process.	Need for Consultation	Reliance on Others
Relying on Interpreters	9:31		Need for Consultation	Reliance on Others
Relying on Interpreters	9:51	How broadly should interpreters be permitted to influence what is being said?	Need for Consultation	Reliance on Others
Relying on Interpreters	9:113	Professionalism of the interpreter seems to matter.	Need for Consultation	Reliance on Others

Relying on Interpreters	9:172	The court assumes that language is the same as culture, and doesn't parse it out. Interpreter's may actually know this, but are limited by the system to do anything about it.	Need for Consultation	Reliance on Others
Literature Review	2:25	Feels like examiner has to substantiate impression of cultural significance. Possibly a fear of being wrong, feeling like it has to be proven.	Need for Consultation	Reliance on Others
Literature Review	4:39	Multiple variables here. A feeling of being overwhelmed, exasperated, confused, and concerned for reaching the correct conclusion.	Need for Consultation	Reliance on Others
Internet Research	4:71		Need for Consultation	Reliance on Others
Internet Research	6:18	Using the internet alone or with minimal consultation could be problematic. What internet resources are being used?	Need for Consultation	Reliance on Others
Internet Research	6:19	Have you ever gone beyond the internet or your peers in the office to conduct research? The internet is good enough. How does he know?	Need for Consultation	Reliance on Others
Internet Research	7:28	Did not go into a lot of detail about what internet sources the examiner uses.	Need for Consultation	Reliance on Others
Internet Research	9:119	The examiner draws a connection/rule out with the CST process and individual literacy. Going back to the written vs oral tradition of American Courts. Also addresses a cognitive capacity question.	Need for Consultation	Reliance on Others
Relying on Interpreters	1:10	Consulted with Interpreter to not only translate, but whether the Language is normalized (cultural) or delusional. Shifting responsibility? Seeking consultation? Is this appropriate. Recognizes a need for consultation.	Need for Consultation	Reliance on Others
Relying on Interpreters	1:12	Cultural consultation with interpreters, not just language. (only option?)	Need for Consultation	Reliance on Others
Relying on Interpreters	1:24	Get in the way. We need them, but can we trust them? Challenge with interpreters not doing literal translation.	Need for Consultation	Reliance on Others
Relying on Interpreters	2:63	Need to train them in order to achieve objective.. Uncertainty and lack of comfort with needed to	Need for Consultation	Reliance on Others
Relying on Interpreters	2:64	accommodate cultural/language issues	Need for Consultation	Reliance on Others
Relying on Interpreters	3:21	Culture is more than just translating the language	Need for Consultation	Reliance on Others
Relying on Interpreters	4:10	"Interpreters are just horrible" Strong statement made by the examiner.	Need for Consultation	Reliance on Others
Relying on Interpreters	7:29	Trust that the interpreter can accurately interpret cultural meaning.	Need for Consultation	Reliance on Others
Relying on Attorneys	2:70	Needing to rely on someone else, like an attorney make the decision. Is it just a data point, or is the examiner shifting the responsibility to someone else?	Need for Consultation	Reliance on Others

		Will second guess self if did not review chart notes before the interview. But is inconsistent on how she approaches history or ward notes. Feels that she must have an opinion before she leaves the interview.		
Relying on Attorneys	4:91	Examiner feels very stressed out about her process.	Need for Consultation	Reliance on Others
Relying on Attorneys	5:63	"Really got an Accurate Picture" This was a white male defendant, who was deaf. How does a subculture within the dominate culture impact?	Need for Consultation	Reliance on Others
Relying on Ward Staff	1:53	Reliant on Ward Staff who have more contact with the defendant. Uncontrolled bias however can be deceptive. Decision making can be difficult. Is it necessary to have a decision before leaving the evaluation?	Need for Consultation	Reliance on Others
Relying on Ward Staff	4:89	Either the defendant is competent or "crazy." Culture not considered.	Need for Consultation	Reliance on Others
Relying on Ward Staff	4:90	Will second guess self if did not review chart notes before the interview. But is inconsistent on how she approaches history or ward notes. Feels that she must have an opinion before she leaves the interview.		
Relying on Ward Staff	4:91	Examiner feels very stressed out about her process. Although the examiner is talking with others, there is a feeling that little consultation is occurring and rather is looking for confirmation.	Need for Consultation	Reliance on Others
Relying on Ward Staff	4:50	Interdisciplinary team is needed to identify culture and problems	Need for Consultation	Reliance on Others
Consultation with Ward Staff	2:68	Consultation is important, but there is a sense of concern about making the wrong decision.	Need for Consultation	Reliance on Others
Relying on Treatment Team	2:71	Need to take a moment to try to understand the other. But this usually only happens when the cultural differences are obvious and "extreme" or "severe". Are we missing subtlty that could impact the evaluation?	Need for Consultation	Reliance on Others
Relying on Treatment Team	6:16	Use of Communication Specialist to give cultural context as interpretation, not just translation.	Need for Consultation	Reliance on Others
Using Cultural Interpreter	9:44	Providing opportunities. Culture isnt just Language	Need for Consultation	Reliance on Others
Using Cultural Interpreter	9:46	Examiner expanded knowledge by gaining a FRAME OF REFERENCE to view the defendant's culture. Expanded the clearing.	Need for Consultation	Reliance on Others
Background Work	3:88	Degree of consultation appears to depend on personal familiarity with the culture. Accessing research tools to learn what he can about the culture.	Frame of Reference	Reliance on Others
Background Work	9:106	This is an area of contention among examiners. Some don't get the info ahead of time. Regardless it appears that questions come up that need research even if the examiner did research ahead of time.	Frame of Reference	Reliance on Others
Background Work	9:108		Frame of Reference	Reliance on Others

Background Work	9:115	Overcoming assumptions and getting to specifics of culture for the individual.	Frame of Reference	Reliance on Others
Learning from the Other	4:49	Repeats prior statements. Examiner is voicing frustration and showing bias. Uses ignorance as a way to escape the cognitive dissonance of not wanting to be biased, but is. Examiner must understand the frame of reference for a defendant to determine if competent.	Frame of Reference	Reliance on Others
Learning from the Other	6:12	Need to take a moment to try to understand the other. But this usually only happens when the cultural differences are obvious and "extreme" or "severe". Are we missing subtlety that could impact the evaluation?	Frame of Reference	Reliance on Others
Learning from the Other	6:16		Frame of Reference	Reliance on Others
Learning from the Other	6:25		Frame of Reference	Reliance on Others
Learning from the Other	6:26		Frame of Reference	Reliance on Others
Learning from the Other	3:89	Challenged prejudiced information previously gained from watching a movie. Expanded the clearing. First hand account of the interview changed the way that the examiner thought about a piece of Cambodian history and culture, causing him to reassess previously held beliefs,	Redefining Stereotypes	Reliance on Others
Learning from the Other	3:90	To what degree does the examiner rely on others, and what degree is he taking the initiative to find the answers, and needs consultation to do so? The sense is that this is a nuisance for the examiner.	Redefining Stereotypes	Reliance on Others
Learning from the Other	5:68	It's not the examiner's job to determine competency, although he has felt free to opine on it with non-multicultural defendants.	Redefining Stereotypes	Reliance on Others
Having to rely on Others	5:81	Interdisciplinary team is needed to identify culture and problems	Shifting Responsibility	Culture as a Nuisance
Someone Else Decides	2:68	Examiner removes himself from the opinion. Merely gives facts. This is powerful and subjective, despite the guise of objectivity. Removes responsibility from the examiner (or at least removes the appearance of responsibility).	Shifting Responsibility	Culture as a Nuisance
Triar of Fact Decides	9:130	Cultural consultation with interpreters, not just language. (only option?)	Shifting Responsibility	Culture as a Nuisance
Relying on Treatment Team	1:12	Attorney should look at it. Have to consider it sometimes, but not all the time? Don't know what you don't know.	Shifting Responsibility	Culture as a Nuisance
Relying on Interpreters	1:29	Why did the communication breakdown? Was there a cultural component that was missed?	Shifting Responsibility	Culture as a Nuisance
Relying on Interpreters	1:81	Language, ethnicity, geography, race or someone else identified a cultural difference. Obviousness is important.	Shifting Responsibility	Culture as a Nuisance
Relying on Interpreters	2:57		Shifting Responsibility	Culture as a Nuisance
Relying on Interpreters	4:114		Shifting Responsibility	Culture as a Nuisance

Relying on the Other	3:103	Shifted blame for miscommunication to the defendant, blaming their cultural lens as to why communication breaks down.	Shifting Responsibility	Culture as a Nuisance
Blaming the Other	4:7	Examiner apparently struggles with owning her white privilege and looked at African American defendants as the cause of the conflict. She also blames media response as contributing to the negative interactions.	Shifting Responsibility	Culture as a Nuisance
Blaming the Other	4:9	Examiner then reverts back that it's the defendant's fault that the examiner struggles with working with them.	Shifting Responsibility	Culture as a Nuisance
Blaming the Other	4:64	Examiner has expressed frustration about struggles with defendants who feel persecuted by the system. Again is devaluing the experience.	Shifting Responsibility	Culture as a Nuisance
Blaming the Other	4:102	Examiner gave up trying to connect with the defendant.	Shifting Responsibility	Culture as a Nuisance
Blaming the Other	4:103	Examiner tried to explain that she feels that she is usually able to establish rapport with defendants, but in this case he wasn't willing to accept it. Note: Examiner feels she is trying to "protect" the defendant... this is a very paternal/power perspective.	Shifting Responsibility	Culture as a Nuisance
Blaming the Other	4:104	Examiner expressed frustration and almost irritation that she was unable to reach the defendant. But the sense is that it was his fault that she didn't reach him.	Shifting Responsibility	Culture as a Nuisance
Blaming the Other	4:105	Usually able to at least get through the evaluation, examiner was unable to connect with the client, so it was his fault. Wonder if she was more annoyed that he was delaying the eval/making it harder.	Shifting Responsibility	Culture as a Nuisance
Blaming the Other	4:6	Identified African American people as a group that the examiner struggles to work with and blames political climate.	Shifting Responsibility	Culture as a Nuisance
Blaming the Other	5:77	Examiner places the responsibility of competency on the defendant. B/C the Dusky standard says so.	Shifting Responsibility	Culture as a Nuisance
Blaming the Other	6:37	culture as something extraneous to ourselves, effects our functioning	Shifting Responsibility	Culture as a Nuisance
Blaming the Other	7:51	Self-awareness about not wanting to pathologize a culture, but then makes assumptions about what might be culturally normal.	Shifting Responsibility	Culture as a Nuisance
Blaming the Other	9:56	Complexity of the charges can influence a defendant's ability to understand the crime.	Shifting Responsibility	Culture as a Nuisance
Blaming the Other	9:60	Education intersects with culture. What type of education? American vs non-western	Shifting Responsibility	Culture as a Nuisance
Blaming the Other	9:83	Different experiences influence how defendants interact with authority. Culturally and experientially bound phenomenon.	Shifting Responsibility	Culture as a Nuisance

		Unless we have outside consultation to help make a choice, the system will fail defendants. But if the interpreter doesn't know the culture then relying on the resource is detrimental.		
Relying on Interpreters	4:127		Shifting Responsibility	Culture as a Nuisance
Relying on Interpreters	9:47	Misunderstandings occur frequently by just using an interpreter.	Shifting Responsibility	Culture as a Nuisance
Relying on Interpreters	9:177	Provides a sort of contradictory position. Wants a verbatim translation, but expects the translator to know if the examiner is not catching cultural nuance. Attorney may have had special training or more experience. The examiner stated that she relied on how well the client worked with his attorney. But this is variable based on the attorney's experience, training, and personality.	Shifting Responsibility	Culture as a Nuisance
Relying on Attorneys	1:34	Attorney may have had special training or more experience. The examiner stated that she relied on how well the client worked with his attorney. But this is variable based on the attorney's experience, training, and personality.	Shifting Responsibility	Culture as a Nuisance
Relying on Attorneys	1:36	Checking into culture is not routine. It may be "readily apparent."	Shifting Responsibility	Culture as a Nuisance
Relying on Attorneys	1:66	System wide problem. No one (including the attorneys) know what to do about culture.	Shifting Responsibility	Culture as a Nuisance
Relying on Attorneys	4:117	Can lead to a pathologizing of culture. Defense is left to interpret cultural and linguistic meaning, when the interpreter may be better suited.	Shifting Responsibility	Culture as a Nuisance
Relying on Attorneys	9:49	Assume that she wouldn't talk again, because of history.	Shifting Responsibility	Culture as a Nuisance
Trusting Prior Examinations	1:83	This examiner is also looking for a non-cultural reason. Language, ethnicity, geography, race or someone else identified a cultural difference. Obviousness is important.	Shifting Responsibility	Culture as a Nuisance
Relying on Prior Examiners	2:57	Assumption that prior examiners had established that the defendant was competent in some areas of knowledge. How does he know for sure?	Shifting Responsibility	Culture as a Nuisance
Relying on Prior Examiners	6:53	Other evaluations are relied on to flag cultural concerns.	Shifting Responsibility	Culture as a Nuisance
Relying on Prior Examiners	7:33	Settles on that culture should be considered in each case, but that it should have been identified in a prior evaluation.	Shifting Responsibility	Culture as a Nuisance
Relying on Prior Examiners	7:44	How do you tease that out? Examiner "gives" culturally diverse patients to another examiner.	Shifting Responsibility	Culture as a Nuisance
Relying on Prior Examiners	4:37	Utilizes resources of minority colleagues.	Shifting Responsibility	Culture as a Nuisance
Relying on Another Examiner	3:27		Shifting Responsibility	Culture as a Nuisance
Relying on Cultural Authority	4:61		Shifting Responsibility	Culture as a Nuisance
Relying on the Other	7:31	Although the examiner is relying on the patient for feedback on accuracy of	Shifting Responsibility	Culture as a Nuisance

		Examiner apparently struggles with owning her white privilege and looked at African American defendants as the cause of the conflict. She also blames media response as contributing to the negative interactions. Here the examiner continues to identify problems she has had with interpreters and then blames them for not understanding what the examiner needs from them.		
Blaming the Zeitgeist	4:7		Shifting Responsibility	Culture as a Nuisance
Blaming the Zeitgeist	4:13	what do you think the court is asking for when they ask about culture? Court asked if examiner considered culture, but unsure of how the court views it (variable? Appearance of MI? obstacle?) Becomes important if the court asked it.	Shifting Responsibility	Culture as a Nuisance
Blaming the Interpreter	5:47	How disease or defect are defined can impact the pathologizing of culture. Ethnicity plays a role not only for the defendant, but all of the players in the court. Examiner brought up interpreter problems early on in the interview and felt that this was a critical problem with CST.	Shifting Responsibility	Culture as a Nuisance
Blaming the Interpreter	9:70		Shifting Responsibility	Culture as a Nuisance
Blaming the Interpreter	9:71		Shifting Responsibility	Culture as a Nuisance
Blaming the Interpreter	9:78	Subtle issues that cause cultural conflict. Is it inability, unwillingness, ignorance, and/or fear that leads the examiner from addressing the conflict? Does not hold well in RCW, b/c mental disease or defect must be present. Can you shift responsibility for a defendant being competent or not, if the other actors in the CJ system are not culturally competent?	Shifting Responsibility	Culture as a Nuisance
Blaming the CJ Actors	9:57	Who's responsibility is it to define this? What has the case law said about it. Perhaps change should come from the Forensic Psych Field.	Shifting Responsibility	Culture as a Nuisance
Blaming the CJ Actors	9:69	How disease or defect are defined can impact the pathologizing of culture. Ethnicity plays a role not only for the defendant, but all of the players in the court. Different experiences influence how defendants interact with authority. Culturally and experientially bound phenomenon.	Shifting Responsibility	Culture as a Nuisance
Blaming the CJ Actors	9:70		Shifting Responsibility	Culture as a Nuisance
Blaming the CJ Actors	9:83	Court doesn't really care in the examiner's opinion. You just have to kind of "check the box."	Shifting Responsibility	Culture as a Nuisance
Court Requirement	5:49	Suggestion that the motivation is that the court seeks the right answer.	Shifting Responsibility	Culture as a Nuisance
Court Requirement	5:50	Examiner removes himself from the opinion. Merely gives facts. This is powerful and subjective, despite the guise of objectivity. Removes responsibility from the examiner (or at least removes the appearance of responsibility).	Shifting Responsibility	Culture as a Nuisance
Avoid Giving Opinion	9:130	Why not both Culture and MI? Separated out religion... why?	Shifting Responsibility	Culture as a Nuisance
Assertion of Power	1:71		Assertion of Power	Culture as a Nuisance

Assertion of Power	4:6	Identified African American people as a group that the examiner struggles to work with and blames political climate.	Assertion of Power	Culture as a Nuisance
Conflict with the Other	4:7	Examiner apparently struggles with owning her white privilege and looked as African American defendants as the cause of the conflict. She also blames media response as contributing to the negative interactions.	Assertion of Power	Culture as a Nuisance
Conflict with the Other	4:9	Examiner then reverts back that it's the defendant's fault that the examiner struggles with working with them. Identified African American men as a group that the examiner struggles to work with and blames political climate.	Assertion of Power	Culture as a Nuisance
Conflict with the Other	4:15	Examiner gave up trying to connect with the defendant.	Assertion of Power	Culture as a Nuisance
Conflict with the Other	4:102	Examiner tried to explain that she feels that she is usually able to establish rapport with defendants, but in this case he wasn't willing to accept it. Note: Examiner feels she is trying to "protect" the defendant... this is a very paternal/power perspective.	Assertion of Power	Culture as a Nuisance
Conflict with the Other	4:103	Examiner continues to bounce back and forth between identifying racial groups and struggles with language difference. Possible narrow definition of what culture is.	Assertion of Power	Culture as a Nuisance
Conflict with the Other	4:17	Identified a need for "Qualified" Interpreters. Shared cultural background can be problematic when the defendant and examiner are at odds because of cultural background.	Assertion of Power	Culture as a Nuisance
Conflict with the Other	9:159	Even examiners within the same cultural group may make assumptions about a defendant that can lead to conflict. Power perspective is still important even within the group, when one of the members is the examiner.	Assertion of Power	Culture as a Nuisance
Conflict with the Defendant	9:167	Racial disparity and experience of whites in position of power and authority worked against the examiner when working with Black male.	Assertion of Power	Culture as a Nuisance
Conflict with the Interpreter	1:95	Can't make assumptions that the interpreter and defendant will be able to work together in a culturally competent way just because they look similar or share language.	Assertion of Power	Culture as a Nuisance
Conflict with the Interpreter	9:73	Similar example as before.	Assertion of Power	Culture as a Nuisance
Conflict with the Interpreter	9:74	How do you handle an clear cultural conflict between two groups. Failure to note that this could be an issue, can you address it at onset?	Assertion of Power	Culture as a Nuisance
Conflict with the Interpreter	9:77		Assertion of Power	Culture as a Nuisance

Conflict with the Interpreter	9:175	It's important to remember that examiners are part of the criminal justice system and are just as likely to impose oppressive actions. Power differential between examiners and interpreters as well as with the defendant.	Assertion of Power	Culture as a Nuisance
Accusing hypersensitivity regarding race	4:47	Personally--- this is an interesting statement. The examiner feels that perhaps there is a bias against the examiner. Very defensive posture.	Assertion of Power	Culture as a Nuisance
Accusing hypersensitivity regarding race	1:95	Racial disparity and experience of whites in position of power and authority worked against the examiner when working with Black male.	Assertion of Power	Culture as a Nuisance
Need to be PC	1:96	How the examiner communicates signifies a power disparity.	Assertion of Power	Culture as a Nuisance
Assumption of the Other	1:97	Made assumptions as to what the defendant meant by the examiner sounds superior.	Assertion of Power	Culture as a Nuisance
Assumption of the Other	2:23	Felt it impacted... gut reaction? What about cases where they impact and there is not gut reaction?	Assertion of Power	Culture as a Nuisance
Assumption of the Other	3:28	Being from a power and privileged group allows for the viewing of other cultures as homogenous (incorrectly groups others as one) This leads to misconceptions and stereotypes.	Assertion of Power	Culture as a Nuisance
Assumption of the Other	3:35	The sense is that the examiner is not sure how to proceed when an assumption of the other has been made, and was realized.	Assertion of Power	Culture as a Nuisance
Assumption of the Other	3:33	Is what we do good enough? Acknowledgement that we miss things.	Assertion of Power	Culture as a Nuisance
Assumption of the Other	3:92	We're more homogenous then other more socially stratified countries. Don't know if this is true, perhaps	Assertion of Power	Culture as a Nuisance
Assumption of the Other	3:95	less obvious with the U.S.	Assertion of Power	Culture as a Nuisance
Assumption of the Other	3:96		Assertion of Power	Culture as a Nuisance
Assumption of the Other	3:98	Despite his acknowledging that his opinion is likely dated, the examiner reversed and due comparisons between the other and his experience as an American.	Assertion of Power	Culture as a Nuisance
Assumption of the Other	4:45	"Whole thing about"- outsider assumption of an issue impacting Af. Am. Shows a probably feeling of doubt about the legitimacy about the issue...	Assertion of Power	Culture as a Nuisance
Assumption of the Other	4:46	Othering... continued questions about legitimacy.	Assertion of Power	Culture as a Nuisance
Assumption of the Other	4:48	This is the telling statement. The examiner makes the assumption of paranoia rather than a legit concern..	Assertion of Power	Culture as a Nuisance
Assumption of the Other	4:49	Repeats prior statements. Examiner is voicing frustration and showing bias. Uses ignorance as a way to escape the cognitive dissonance of not wanting to be biased, but is.	Assertion of Power	Culture as a Nuisance

Assumption of the Other	4:52	Again making assumptions of the other's experience. A very judging statement... Consistent with past statements.	Assertion of Power	Culture as a Nuisance
Assumption of the Other	4:81	Even if they look different from the examiner, if they speak English, then culture is not explored.	Assertion of Power	Culture as a Nuisance
Assumption of the Other	4:99	Examiner became frustrated with the evaluation, didn't know how to progress once her clinical skill attempt at reflection failed, and ultimately gave up.	Assertion of Power	Culture as a Nuisance
Assumption of the Other	4:108	Assumed that he would respond negatively, so avoided writing down notes during the interview.	Assertion of Power	Culture as a Nuisance
Assumption of the Other	6:56	Assuming that b/c someone lives here that they know about the dominant cultural norms.	Assertion of Power	Culture as a Nuisance
Assumption of the Other	6:57		Assertion of Power	Culture as a Nuisance
Assumption of the Other	7:36	If they speak English then culture shouldn't be an issue any more...	Assertion of Power	Culture as a Nuisance
Assumption of the Other	8:34	Power Perspective, LABLED with Thug Life, Race and Culture conflated	Assertion of Power	Culture as a Nuisance
Assumption of the Other	8:35	Can you wear his shoes? Made assumptions about him, Don't know what you don't know	Assertion of Power	Culture as a Nuisance
Assumption of the Other	9:76	Stereotyping a group based on religious practice. While done in a educational way, still demonstrates an outsider and power perspective. Micro-Aggression	Assertion of Power	Culture as a Nuisance
Personal Opinion	2:24	Has to be clear one way or the other.	Assertion of Power	Culture as a Nuisance
Personal Opinion	2:25	Feels like examiner has to substantiate impression of cultural significance. Possibly a fear of being wrong, feeling like it has to be proven.	Assertion of Power	Culture as a Nuisance
Personal Opinion	2:26		Assertion of Power	Culture as a Nuisance
Personal Opinion	2:33	Reason... what type of reason? Unable to come up with a reason.	Assertion of Power	Culture as a Nuisance
Personal Opinion	3:9	Working on what cultural differences means to him, Cultural Differences may fall on a spectrum from how different they are from the examiner.	Assertion of Power	Culture as a Nuisance
Personal Opinion	3:10	Examiner is putting all the elements of what we had previously talked about together to define culture for himself.	Assertion of Power	Culture as a Nuisance
Personal Opinion	3:75	When culture "seems to be a factor" it is addressed more. Opinion based.	Assertion of Power	Culture as a Nuisance
Personal Opinion	3:103	Shifted blame for miscommunication to the defendant, blaming their cultural lens as to why communication breaks down.	Assertion of Power	Culture as a Nuisance
Personal Opinion	4:48	This is the telling statement. The examiner makes the assumption of paranoia rather than a legit concern..	Assertion of Power	Culture as a Nuisance
Personal Opinion	4:109	Examiner specifically stated that she didn't think the defendant's behavior was culturally influenced.	Assertion of Power	Culture as a Nuisance

Personal Opinion	5:64	Reasonable is good enough, even if it's not necessarily right.	Assertion of Power	Culture as a Nuisance
Personal Opinion	7:19	Examiner chooses the lens for which to view the defendant.	Assertion of Power	Culture as a Nuisance
Personal Opinion	7:32		Assertion of Power	Culture as a Nuisance
		Degree of consultation appears to depend on personal familiarity with the culture. Accessing research tools to learn what he can about the culture.	Assertion of Power	Culture as a Nuisance
Personal Opinion	9:106	Question seeking until the examiner thinks he has enough information to form an opinion.	Assertion of Power	Culture as a Nuisance
Personal Opinion	9:124	Personal opinion of how the law should be interpreted by examiners.	Assertion of Power	Culture as a Nuisance
Personal Opinion	9:129	The decision to invoke accommodations in this statement is made by the examiner.	Assertion of Power	Culture as a Nuisance
Personal Opinion	9:138			
Personal Opinion	9:148	This examiner's personal experience placed his values on being global. This influences the way he sees his clients. Examiner is of the opinion that most examiners don't tell interpreters that it is okay for them to speak up.	Assertion of Power	Culture as a Nuisance
Personal Opinion	9:178	Establishing background and context. This is informed by experience and can be a place for insight, as well as miss-steps.	Assertion of Power	Culture as a Nuisance
Controlling the Interview	9:117	Attempting to utilize tools that are culturally appropriate.	Assertion of Power	Culture as a Nuisance
Controlling the Interview	9:122	The examiner knows about power & privilege, but struggles with how it is applied.	Assertion of Power	Culture as a Nuisance
Self-Image	4:60	"All this cultural stuff." Frustration of what to do. Examiner creates a Binary Choice (either the cultural difference is so extreme that it completely impacts the evaluation, or it's not). Doesn't recognize a possible spectrum.	Assertion of Power	Culture as a Nuisance
Self-Image	4:33	Workplace/colleagues, and training where culture has been identified. But does the examiner have a clear practice of addressing culture? A sense of I'm trained, so I'm good now, it's something for other examiners to discuss.	Assertion of Power	Culture as a Nuisance
Devaluing the Other	5:56		Assertion of Power	Culture as a Nuisance
chooses to/not consider culture	6:52	Basic Concepts... assumption of basic understanding. Expectations of things being basic.	Assertion of Power	Culture as a Nuisance
Assumption of Malingering	8:44	Will consult, but a feeling of only when necessary, again a sense of aloneness. Reluctance to consult.	Assertion of Power	Culture as a Nuisance
Reluctance to Consult	8:57	First Impressions, unable to deal with your own biases and they linger during the entire evaluation	Assertion of Power	Culture as a Nuisance

Reluctance to Consult	9:175	It's important to remember that examiners are part of the criminal justice system and are just as likely to impose oppressive actions. Power differential between examiners and interpreters as well as with the defendant.	Assertion of Power	Culture as a Nuisance
Conflicting Statement	9:131	Despite stating that he doesn't render an opinion, and doesn't feel it is the examiner's place to render an opinion, he more or less does so in this example.	Assertion of Power	Culture as a Nuisance
Ignoring Own Bias	4:51	Here, the examiner states that she ultimately relies primarily on her opinion and personal experience.	Power Perspectives	Culture as a Nuisance
Own Experience	4:54	Requires multiple exposure to the same event, before the examiner acknowledges	Power Perspectives	Culture as a Nuisance
Own Experience	7:60	It's important to self-reflect and be self-aware, but the quality of this may be very dependent on grad school or other training.	Power Perspectives	Culture as a Nuisance
Own Experience	7:61		Power Perspectives	Culture as a Nuisance
Own Experience	8:5	Some personal experience and interest. With experience comes perspectives. How has experience coupled with self-identity impact competency evaluation approaches?	Power Perspectives	Culture as a Nuisance
Own Experience	8:6		Power Perspectives	Culture as a Nuisance
Own Experience	8:10	Relies of self experience to get him through. How well has it worked?	Power Perspectives	Culture as a Nuisance
Own Experience	8:12	How does being from an ethnically diverse family impact perspective during evaluation with culturally diverse defendants?	Power Perspectives	Culture as a Nuisance
Own Experience	8:13		Power Perspectives	Culture as a Nuisance
Own Experience	8:45	Assumption that the examiner already knows... reliance on self, but may not know what he doesn't know.	Power Perspectives	Culture as a Nuisance
Own Experience	9:5	Examiner has done many cases involving cross culture clients and considers it to be what he normally does.	Power Perspectives	Culture as a Nuisance
Own Experience	9:9	Self proclaimed Cross culture is his speciality.	Power Perspectives	Culture as a Nuisance
Own Experience	9:11	Evaluator is a Non-native speaker of another language and does evals in the language. Is culture captured in translation?	Power Perspectives	Culture as a Nuisance
Own Experience	9:13	Sees almost no English speaking clients, and has gotten more and more clients over the years. High demand. Does he prefer non-English speaking clients?	Power Perspectives	Culture as a Nuisance
Own Experience	9:14	Again, non-native speaker. Is culture captured in translation? Specifically looks for	Power Perspectives	Culture as a Nuisance
Own Experience	9:16	Examiner was proud of the diversity of clients he has seen.	Power Perspectives	Culture as a Nuisance
Own Experience	9:17	Late learner of Spanish. Emersion, to what degree? How does later exposure to a language impact understanding of cultural nuance?	Power Perspectives	Culture as a Nuisance

Own Experience	9:18	Is there a danger of misinterpreting culture, because of confidence in the language and own experience? Don't know what you don't know.	Power Perspectives	Culture as a Nuisance
Own Experience	9:25	Reverted back and identified a nationality as one he identifies with. Broad cultural group. Not specific. Competency restoration is a misnomer. Pathologizes the person's culture by assuming that the def is incompetent due to their culture.	Power Perspectives	Culture as a Nuisance
Own Experience	9:35	Non-standard CST across states and fed. Different expectations. No best practice?	Power Perspectives	Culture as a Nuisance
Own Experience	9:66	Who's responsibility is it to define this? What has the case law said about it. Perhaps change should come from the Forensic Psych Field.	Power Perspectives	Culture as a Nuisance
Own Experience	9:69		Power Perspectives	Culture as a Nuisance
Own Experience	9:75	How do you handle an clear cultural conflict between two groups. Failure to note that this could be an issue, can you address it at onset?	Power Perspectives	Culture as a Nuisance
Own Experience	9:76	How do you handle an clear cultural conflict between two groups. Failure to note that this could be an issue, can you address it at onset?	Power Perspectives	Culture as a Nuisance
Own Experience	9:77	There is a false idea that we have to give testimony and oral debate in US courts. This is required for due process and CST, but in fact this is not required in the vast majority of cases where pleabargains are the deciding outcome.	Power Perspectives	Culture as a Nuisance
Own Experience	9:89		Power Perspectives	Culture as a Nuisance
Own Experience	9:116	Clinical decision that is informed by personal experience. Professional opinion plays a significant role on how the process continues.	Power Perspectives	Culture as a Nuisance
Own Experience	9:121	Attempting to utilize tools that are culturally appropriate.	Power Perspectives	Culture as a Nuisance
Own Experience	9:122	Subjective approach. Satisfactory is an ambiguous term and can vary significantly from person to person.	Power Perspectives	Culture as a Nuisance
Own Experience	9:123	Lost in translation. Terms mean different things in another language then they do in English. Role or name doesn't translate correctly or doesn't exist in native language. This is a CRITICAL component for culture.	Power Perspectives	Culture as a Nuisance
Own Experience	9:126	Bilingual could indicate assumption of acculturation.	Power Perspectives	Culture as a Nuisance
Own Experience	9:127	Language and culture get conflated or confused?	Power Perspectives	Culture as a Nuisance
Own Experience	9:131	Despite stating that he doesn't render an opinion, and doesn't feel it is the examiner's place to render an opinion, he more or less does so in this example.	Power Perspectives	Culture as a Nuisance
Own Experience	9:136	Dusky as applied to Wa and Oregon	Power Perspectives	Culture as a Nuisance

Own Experience	9:148	This examiner's personal experience placed his values on being global. This influences the way he sees his clients.	Power Perspectives	Culture as a Nuisance
Own Experience	9:149		Power Perspectives	Culture as a Nuisance
		Like with language, not all examiners know how to appropriately use assessments cross-culturally, even if the examiner shares a similar background to the examinee.		
Own Experience	9:157	Examiner brought up African Americans as an example of a group he does not work with, however, he did not acknowledge the difference in race, immigration status, or culture.	Power Perspectives	Culture as a Nuisance
Own Experience	9:165	Sees almost no English speaking clients, and has gotten more and more clients over the years. High demand.	Power Perspectives	Culture as a Nuisance
Specializes in Cross-Culture	9:13	Does he prefer non-English speaking clients?	Power Perspectives	Culture as a Nuisance
Specializes in Cross-Culture	4:8	Examiner recognized that she may not know what it's like for an African American defendant, but is uncertain. It's important to self-reflect and be self-aware, but the quality of this may be very dependent on grad school or other training.	Power Perspectives	Culture as a Nuisance
Self-Image	7:60		Power Perspectives	Culture as a Nuisance
Self-Perspective	7:61		Power Perspectives	Culture as a Nuisance
Self-Perspective	2:19	Cases where culture obviously plays a role are harder.	Power Perspectives	Culture as a Nuisance
Challenging	2:20	Cases where culture obviously plays a role are harder. Potentially more time consuming as well.	Power Perspectives	Culture as a Nuisance
Challenging	2:62	It's just harder. Doesn't know how exactly, but it's harder. A sense of uncomfortability and uncertainty.	Power Perspectives	Culture as a Nuisance
Challenging	8:30	It's hard to see some else's perspective. Can take the shoes off.	Power Perspectives	Culture as a Nuisance
Challenging	3:102	Own cultural experience "probably" impacts relationships with other-cultural defendants.	Power Perspectives	Culture as a Nuisance
Uncertainty	3:8	Again, he appeared unclear about how many people from different cultures he actually evaluates. Conflated culture with geography	Power Perspectives	Culture as a Nuisance
Recognizing Differences	3:10	Examiner is putting all the elements of what we had previously talked about together to define culture for himself.	Power Perspectives	Culture as a Nuisance
Recognizing Differences	3:23	Researches cultural differences	Power Perspectives	Culture as a Nuisance
Recognizing Differences	3:26	Recognized that there is a lot of nuance within the primary culture. Self-Deprecating comment that should do more.	Power Perspectives	Culture as a Nuisance
Recognizing Differences	3:27	Utilizes resources of minority colleagues.	Power Perspectives	Culture as a Nuisance
Recognizing Differences	3:29	Provided an example to cultural nuances.	Power Perspectives	Culture as a Nuisance
Recognizing Differences	4:47	Personally--- this is an interesting statement. The examiner feels that perhaps there is a bias against the examiner. Very defensive posture.	Power Perspectives	Culture as a Nuisance

Recognizing Differences	4:48	This is the telling statement. The examiner makes the assumption of paranoia rather than a legit concern..	Power Perspectives	Culture as a Nuisance
Recognizing Differences	4:73	Regardless of what you think the person's culture or ethnicity, culture should always be considered.	Power Perspectives	Culture as a Nuisance
Recognizing Differences	4:81	Even if they look different from the examiner, if they speak English, then culture is not explored.	Power Perspectives	Culture as a Nuisance
Recognizing Differences	4:100	The examiner recognized that she was unable to understand the perspective of the defendant, and even began to take ownership.	Power Perspectives	Culture as a Nuisance
Recognizing Differences	4:126	Suggests that unless you have first hand knowledge of the culture, then there is no way to know.	Power Perspectives	Culture as a Nuisance
Recognizing Differences	6:12	Examiner must understand the frame of reference for a defendant to determine if competent.	Power Perspectives	Culture as a Nuisance
Recognizing Differences	6:16	Need to take a moment to try to understand the other. But this usually only happens when the cultural differences are obvious and "extreme" or "severe". Are we missing subtly that could impact the evaluation? So it seems more like consultation is more focused on how you see the client and how they are different from you.	Power Perspectives	Culture as a Nuisance
Recognizing Differences	7:17	Competency requires knowledge that may be lacking for someone from another culture. Examiner identified this.	Power Perspectives	Culture as a Nuisance
Recognizing Differences	7:50	Avoid pathologizing by strictly using a Western	Power Perspectives	Culture as a Nuisance
Recognizing Differences	7:54	Perspective	Power Perspectives	Culture as a Nuisance
Recognizing Differences	7:55	You cannot recognize differences perfectly, but it's important to be aware.	Power Perspectives	Culture as a Nuisance
Recognizing Differences	8:14	Draws on life experience to identify ALL types of ethnicities and cultural identities. Is there a danger of incorrect assumptions by being too aware of differences?	Power Perspectives	Culture as a Nuisance
Recognizing Differences	8:32	Power perspective, understanding culture is hardwork, it takes "EXTRA WORK"	Power Perspectives	Culture as a Nuisance
Recognizing Differences	8:48	Classism... a sense of hierarchy	Power Perspectives	Culture as a Nuisance
Stratification of Others	3:27	Utilizes resources of minority colleagues.	Power Perspectives	Culture as a Nuisance
Generalizations	3:94	Generalizing his experience to a cultural group. Reinforcing stereotypes.	Power Perspectives	Culture as a Nuisance
Generalizations	3:97	Examiner drew on his personal experience, but acknowledged that his experience was likely outdated. Recognized a colonial aspect to the cultural experience he had.	Power Perspectives	Culture as a Nuisance
Generalizations	4:46	Othering... continued questions about legitimacy.	Power Perspectives	Culture as a Nuisance
Generalizations	7:16	Need to consult, but it's usually not specific to the culture you are evaluating.	Power Perspectives	Culture as a Nuisance
Generalizations	3:89	Challenged prejudiced information previously gained from watching a movie. Expanded the clearing.	Power Perspectives	Culture as a Nuisance

Media Informed	4:7	Examiner apparently struggles with owning her white privilege and looked as African American defendants as the cause of the conflict. She also blames media response as contributing to the negative interactions. Examiner continues to bounce back and forth between identifying racial groups and struggles with language difference. Possible narrow definition of what culture is. Identified a need for "Qualified" Interpreters.	Power Perspectives	Culture as a Nuisance
Media Informed	4:17	The examiner knows about power & privilege, but struggles with how it is applied.	Power Perspectives	Culture as a Nuisance
Language used as a Barrier	4:60	Called his bx as intriguing... very sarcastic response, flippant attitude by the examiner.	Power Perspectives	Culture as a Nuisance
Recognizing Power & Prvilege	4:107	The examiner noted that culture ALWAYS presents as challenge when it comes up in an eval.	Power Perspectives	Culture as a Nuisance
Flippant Attitude	5:18	Reasonable is good enough, even if it's not necessarily right.	Power Perspectives	Culture as a Nuisance
Culture is a Challenge	5:64	Their culture has no bearing on whether they are competent or not, because they are being judged in this culture.	Power Perspectives	Culture as a Nuisance
Reasonable vs. Right	5:74	What happens here is most important.	Power Perspectives	Culture as a Nuisance
Our Culture Trumps Theirs	5:76	The defendant is in America now. So the position is that he must conform to American norms, as set forth by those in power. Power perspective, which is reflected in the Law. The law is equal to everyone as long as you adopt the norms of those who hold the power. Culture seems to be something that gets in the way of the examiner and has to be overcome.	Power Perspectives	Culture as a Nuisance
Our Culture Trumps Theirs	5:79	Differences in justice systems influence people's understanding of ours. Judging other systems with the view that ours is the best.	Power Perspectives	Culture as a Nuisance
Our Culture Trumps Theirs	6:39	Power perspective, The trap here is the one the dominant society has put in place that leads to stereotyping and false assumptions	Power Perspectives	Culture as a Nuisance
Culture is Cumbersome	8:31	Overcoming assumptions and getting to specifics of culture for the individual.	Power Perspectives	Culture as a Nuisance
Putting the Other in Context	9:115	Examiner opined that an examiner and defendant from different cultures from each other, but both are immigrants, would have a certain shared experience. A very power based perspective. Uncertain if there is truth to it.	Power Perspectives	Culture as a Nuisance
Assumption of Differences	9:169	Use of slang term to identify newly immigrated. "Fresh off the boat"	Judging Cultural Values	Culture as a Nuisance
Slang Terms	3:43	Different experiences influence how defendants interact with authority. Culturally and experientially bound phenomenon.	Judging Cultural Values	Culture as a Nuisance
Comparing Cultures	9:83			

Comparing Cultures	9:86	Experience and cultural differences influence opinion and how people may react to our system.	Judging Cultural Values	Culture as a Nuisance
Comparing Cultures	9:87	Ideas found in Dusky is lost on justice systems in which the individual is not expected to participate in their own defense.	Judging Cultural Values	Culture as a Nuisance
Comparing Cultures	9:88	Non-oral tradition in justice systems= difficulty in understanding testimony	Judging Cultural Values	Culture as a Nuisance
Comparing Cultures	9:70	How disease or defect are defined can impact the pathologizing of culture. Ethnicity plays a role not only for the defendant, but all of the players in the court.	Pathologizing Cultural Values	Culture as a Nuisance
Avoiding the Trap	1:11	Afraid of pathologizing the patient by misunderstanding cultural nuance.	Pathologizing Cultural Values	Culture as a Nuisance
Fear of pathologizing culture	3:56	Examiner was trying to avoid pathologizing culture. Examiner expressed concern that misdiagnosis can lead to mislabeling a belief as pathological. However the examiner had very little follow up on this point.	Pathologizing Cultural Values	Culture as a Nuisance
Fear of pathologizing culture	5:12	Has to make sense, from who's perspective?	Pathologizing Cultural Values	Culture as a Nuisance
Fear of pathologizing culture	5:39	Self-awareness about not wanting to pathologize a culture, but then makes assumptions about what might be culturally normal.	Pathologizing Cultural Values	Culture as a Nuisance
Fear of pathologizing culture	7:51	Acknowledged that it is difficult to parse out MI or Culture.	Pathologizing Cultural Values	Culture as a Nuisance
Fear of pathologizing culture	7:52	Although the examiner is coming from a position of not wanting to pathologize culture, there is confusion over the possibility of both MI and Culture.	Pathologizing Cultural Values	Culture as a Nuisance
Fear of pathologizing culture	7:53	Overgeneralization.	Pathologizing Cultural Values	Culture as a Nuisance
Fear of pathologizing culture	8:31	Power perspective, The trap here is the one the dominant society has put in place that leads to stereotyping and false assumptions	Pathologizing Cultural Values	Culture as a Nuisance
Fear of pathologizing culture	1:16	Personal interpretation of defendant, even though doesn't speak the language.	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	1:31	Two sides of the coin: Pathologizes culture, but is also afraid of pathologizing culture, knows should acknowledge cultural effect, but assumes no effect unless extreme, should seek consultation, but not sure when, and then doesn't. Doesn't know what he doesn't know... confusion, emotionality	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	1:32	Assumption of oddness is dependant on own cultural perspective.	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	1:46	So you identified it as a cultural component of his belief system and... (clarifying statement)	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	1:67	Culture and mental illness have to intertwined. Does not take into account how MI might look in a diff culture.	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	1:69	Just don't know what you don't know.	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	1:70	Culture vs. MI	Pathologizing Cultural Values	Culture as a Nuisance

Pathologizing Culture	1:72	Does it? What happens when you don't know that it's a cultural belief?	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	2:13	What they say may sound weird, so it must be delusional.	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	2:14	Absence of what would be consider delusional by our standards, may in fact be indicative of Mental Illness when considering cultural factors.***	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	2:48	Trying to avoid pathologizing culture. Trying to interpret MI inlight of cultural difference.	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	2:79	Concerns about pathologizing culture. He spoke English, which seemed to alleviate some of the stress of the cultural differences.	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	2:80	Trying to avoid pathologizing culture. Trying to interpret MI inlight of cultural difference.	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	2:81	Teasing out unfamiliarity with American criminal justice, or mental illness	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	2:86	Defendant is interpreting through his cultural lens.	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	3:58	Described culture as a wrapper. May suggest something that can be taken off or put on.	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	3:63	Examiner relayed a story in which prior patients of his used a local folklore to describe MI.	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	3:64	Examier draws distinction between local custom/lore, and that it appears differently for those with MI.	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	3:78	The examiner used an example in which he highlighted an extreme case in which a dying woman wouldn't say who had stabbed her because "you keep this in the culture."	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	4:28	Examiner focused on a cultural aspect as the reason why the defednant committed his crimes, but she doesn't believe it, and feels he's malingering or psychotic.	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	4:29	Even though the interpeter who is from the same culture says it's culturally valid, the examiner doubts veracity.	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	5:80	Can a person's culture impact the way the learn about the American system? THEIR CULTURE IS SO EMBEDDED	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	5:83	Their thinking is defective, because of their culture!	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	5:84	Their thinking is too rigid to accommodate the American justice system, creating a defect.	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	6:28	Knowledge is impacted by culture, but the examiner views it as impairment.	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	6:64	Judgement of Unusal Beliefs	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	8:20	Comparison of widely held spiritual beliefs in one culture could be misinterpreted as MI by an examiner.	Pathologizing Cultural Values	Culture as a Nuisance

Pathologizing Culture	8:36	Binary, has to be either he is or he's faking it because of his cultural experience... Pathologizing and Ignoring at the same time. Confabulating malingering, making assumptions of who he is.	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	9:36	Culture could be mistaken for mental illness and thereby pathologized.	Pathologizing Cultural Values	Culture as a Nuisance
Pathologizing Culture	9:139	There is no clear particulars on what to do to assist someone who may need an accomodation. Again, the accomodations under the ADA however do not apply directly to culture. May have to pathologize culture, to get ADA benefifts.	Pathologizing Cultural Values	Culture as a Nuisance
Other's Unfamiliarity	2:82	Looked at capacity to learn, versus mental illness and cultural differences.	Pathologizing Cultural Values	Culture as a Nuisance
Other's Unfamiliarity	2:83	Looked at capacity to learn, versus mental illness and cultural differences.	Pathologizing Cultural Values	Culture as a Nuisance
Other's Unfamiliarity	2:87	Reluctance on behalf of the defendant to trust the system. Assumption that it was culture?	Pathologizing Cultural Values	Culture as a Nuisance
Other's Unfamiliarity	4:100	The examiner recognized that she was unable to understand the perspective of the defendant, and even began to take ownership.	Pathologizing Cultural Values	Culture as a Nuisance
Other's Unfamiliarity	9:85	Fails to acknowledge that our own system may in fact be corrupt, or at least not fair or equal.	Pathologizing Cultural Values	Culture as a Nuisance
Other's Unfamiliarity	9:86	Experience and cultural differences influence opinion and how people may react to our system.	Pathologizing Cultural Values	Culture as a Nuisance
Other's Unfamiliarity	9:88	Non- oral tradition in justice systems= difficulty in understanding testimony	Pathologizing Cultural Values	Culture as a Nuisance
Other's Unfamiliarity	1:89	Sounded like someone familiar with. Language is a part of culture... helps put people at ease.	Overidentifying	Culture as a Nuisance
Sameness	1:90	Shared ethnicity. Confounded culture and ethnicity with geaographical sameness.	Overidentifying	Culture as a Nuisance
Sameness	1:92	Similarity can lead to misunderstanding... Always verify sameness	Overidentifying	Culture as a Nuisance
Sameness	1:93	Experience with assumptions: Youth and female and values of the other- Bias goes both ways... personal experience can lead to microagressions	Overidentifying	Culture as a Nuisance
Sameness	4:73	Regardless of what you thing the person's culture or ethnicity, culture should always be considered.	Overidentifying	Culture as a Nuisance
Sameness	8:12	How does being from an ethnically diverse family impact perspective during evaluation with culturally diverse defendents?	Overidentifying	Culture as a Nuisance
Sameness	8:13		Overidentifying	Culture as a Nuisance
Sameness	8:46	Since he sees prepotinately the same race/ethnicity of people, there is an assumption of sameness with regard to culture.	Overidentifying	Culture as a Nuisance

Sameness	9:153	The majority of examiners are from different cultural backgrounds. Double edged sword, but doesn't address overidentification risk.	Overidentifying	Culture as a Nuisance
Sameness	9:154	Similar heritage can have similarity in cultural and language understanding, but nuance is not addressed. The majority of examiners are from different cultural backgrounds. Double edged sword, but doesn't address overidentification risk.	Overidentifying	Culture as a Nuisance
Sameness	9:153	Similar heritage can have similarity in cultural and language understanding, but nuance is not addressed. Shared cultural background can be problematic when the defendant and examiner are at odds because of cultural background.	Overidentifying	Culture as a Nuisance
Sameness	9:154	Also applies to immigration status. Just because the defendant is not from here, doesn't mean that there are shared experiences with an examiner who is also an immigrant.	Overidentifying	Culture as a Nuisance
Sameness	9:161		Overidentifying	Culture as a Nuisance
Sameness	9:162		Overidentifying	Culture as a Nuisance
Sameness	9:163		Overidentifying	Culture as a Nuisance
Sameness	9:164		Overidentifying	Culture as a Nuisance
Sameness	9:169	Examiner opined that an examiner and defendant from different cultures from each other, but both are immigrants, would have a certain shared experience. A very power based perspective. Uncertain if there is truth to it.	Overidentifying	Culture as a Nuisance
Assumption of the Other	1:94	Values of the other used against examiner	Overidentifying	Culture as a Nuisance
Assumption of the Other	9:22	The examiner is a self described cultural immigrant through acculturation.	Overidentifying	Culture as a Nuisance
Assumption of the Other	9:160	Shared cultural background can be problematic when the defendant and examiner are at odds because of cultural background.	Overidentifying	Culture as a Nuisance
Assumption of the Other	9:164		Overidentifying	Culture as a Nuisance
Assumption of the Other	9:169	Examiner opined that an examiner and defendant from different cultures from each other, but both are immigrants, would have a certain shared experience. A very power based perspective. Uncertain if there is truth to it.	Overidentifying	Culture as a Nuisance
Cultural Immigrant	9:23	Awareness of diversity within different places, even if shared language, doesn't or is unable to identify specifically to one.	Overidentifying	Culture as a Nuisance
Cultural Immigrant	9:25	Reverted back and identified a nationality as one he identifies with. Broad cultural group. Not specific.	Overidentifying	Culture as a Nuisance
Cultural Immigrant	9:24	Acculturated, but only to a certain point. Global citizenship is more highly valued.	Overidentifying	Culture as a Nuisance

Advocating for the Defendant	9:139	There is no clear particulars on what to do to assist someone who may need an accomodation. Again, the accomodations under the ADA however do not apply directly to culture. May have to pathologize culture, to get ADA benefits.	Overidentifying	Culture as a Nuisance
Global Citizen	1:67	Culture and mental illness have to intertwined. Does not take into account how MI might look in a diff culture.	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	1:69	Just don't know what you don't know.	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	1:76	Only if it comes up? How does it not come up? This statement discounts the importance of culture. Doesn't know what she doesn't know.	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	3:6	The examiner may not have realized how often he works with people from other cultures. Ignoring can be unawareness	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	4:21	Capacity is limited because of MI or something else. Not cultural.	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	4:69	Doesn't usually consider culture. May be a byproduct of lack of definition about culture, or unsure where the line is... Do you always need to consider it? This appears to be a theme.	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	4:77	Although the examiner acknowledged that culture should be considered in every case, she acknowledged that she doesn't.	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	4:78		Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	4:79	It's easier to not account for Culture... "I'm lazy."	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	4:90	Either the defendant is competent or "crazy." Culture not considered.	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	4:91	Will second guess self if did not review chart notes before the interview. But is inconsistent on how she approaches history or ward notes. Feels that she must have an opinion before she leaves the interview.	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	4:99	Examiner feels very stressed out about her process. Examiner became frustrated with the evaluation, didn't know how to progress once her clincial skill attempt at reflection failed, and ultimately gave up.	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	4:105	Usually able to at least get through the evaluation, examiner was unable to connect with the client, so it was his fault. Wonder if she was more annoyed that he was delaying the eval/making it harder.	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	4:107	Called his bx as intriguing... very sarcastic response, flippant attitude by the examiner.	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	4:127	Unless we have outside consultation to help make a choice, the system will fail defendants. But if the interpreter doesn't know the culture then relying on the resource is detrimental.	Assumption of Non-Effect	Culture as a Nuisance

Ignoring Culture	5:74	Their culture has no bearing on whether they are competent or not, because they are being judged in this culture.	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	5:75	Doesn't matter what the defendant's culture says or how it has impacted the individual.	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	5:76	What happens here is most important.	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	5:77	Examiner places the responsibility of competency on the defendant. B/C the Dusky standard says so.	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	5:79	The defendant is in America now. So the position is that he must conform to American norms, as set forth by those in power. Power perspective, which is reflected in the Law. The law is equal to everyone as long as you adopt the norms of those who hold the power.	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	5:81	It's not the examiner's job to determine competency, although he has felt free to opine on it with non-multicultural defendants.	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	6:36	derailed... culture as outside or in addition to the CST question... Again need to separate Culture away from the person to determine competency.	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	8:39	Have to force measures to fit the need. By overlaying the experience and not accounting for it in the assessment, we assume no effect of culture.	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture	8:61	Lack of exposure to other languages in his practice. Assumes a mutual understanding. "Language is rarely a barrier for me. Most speak at least some English."	Assumption of Non-Effect	Culture as a Nuisance
Ignoring Culture/Minimizing Impact	1:71	Why not both Culture and MI? Separated out religion... why?	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	1:81	Why did the communication breakdown? Was their a cultural component that was missed?	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	2:50	Distinguishing mental illness from cultural differences	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	3:37	The examiner approached question as a binary choice of MI or Culture.	Assumption of non-effect	Culture as a Nuisance
Binary Choice (Culture or MI)	3:38	Culture or MI? Need culturally appropriate training for restoration.	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	3:68	Examiner acknowledges that cultural norms v abnormal mental state need to be determined, but then states that it applies when a patient is from another culture. How is he defining a different culture? Different from who?	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	3:71	Examiner is focused on symptomology for Dx purposes. Has to tease out culture from symptoms. Seems confusing and overly general.	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	3:84	Teasing out culture from MI using a variety of ways to define culture. Interesting that time is represented through a shared event as a cultural factor.	Assumption of Non-Effect	Culture as a Nuisance

Binary Choice (Culture or MI)	3:86	Would you have known to ask about that if it hadn't been for the interpreter? (clarifying question)	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	4:29	Even though the interpreter who is from the same culture says it's culturally valid, the examiner doubts veracity. Examiner feels that we can tease out the difference between psychosis and culture, but doesn't acknowledge that psychosis can be culturally bound. Has to be one or the other.	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	4:30	Examiner feels that we can tease out psychosis from culture.	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	4:35	The examiner suggested that she is not the only one who is uncertain about how to work with cases where cultural differences present.	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	4:38	Multiple variables here. A feeling of being overwhelmed, exasperated, confused, and concerned for reaching the correct conclusion.	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	4:39	"Whole thing about"- outsider assumption of an issue impacting Af. Am. Shows a probably feeling of doubt about the legitimacy about the issue...	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	4:45	Examiner specifically stated that she didn't think the defendant's behavior was culturally influenced.	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	4:109	Default to the opinion of the interpreter. Is the defendant "crazy or is this cultural."	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	4:121	Despite experiences with different people of different cultures, approach is still toward separating out psychosis from culture. What if culture is the way in which psychosis presents...	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	5:6	Are the symptoms "real" or a figment of the culture?	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	5:35	Examiner assumes culture and MI are not intertwined.	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	5:38	There is a difference between relying on someone else for consultation and trying to shift the responsibility of making a decision on to someone else. Here the examiner recognizes that they lack competency and seek consultation.	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	5:40	Focus is on genuine MI or culture, in that somehow MI is not tied to culture. Was glad that his cases didn't involve significant cultural differences.	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	5:46	Psychosis first, if no psychosis as defined by psychology then look at culture.	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	5:48	Court doesn't really care in the examiner's opinion. You just have to kind of "check the box."	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	5:49		Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	5:72		Assumption of Non-Effect	Culture as a Nuisance

		The examiner is asserting that the defendant must his culture to meet the justice system's requirements of competency.	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	5:78	Either culture or MI...	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	5:82	Confusion and a need to parse out MI or defect from Culture seems to arise often, when perhaps the impact of the MI or defect needs to be reconceptualized through the cultural lens.	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	6:27	Knowledge is impacted by culture, but the examiner views it as impairment.	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	6:28	Culture seems to be something that gets in the way of the examiner and has to be overcome.	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	6:39	Again is it culture or MI? Something to be "teased out" Binary, has to be either he is or he's faking it because of his cultural experience... Pathologizing and Ignoring at the same time. Confabulating malingerer, making assumptions of who he is.	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	6:71	Does it? What happens when you don't know that it's a cultural belief?	Assumption of Non-Effect	Culture as a Nuisance
Binary Choice (Culture or MI)	8:36	Examiner became frustrated with the evaluation, didn't know how to progress once her clinical skill attempt at reflection failed, and ultimately gave up.	Assumption of Non-Effect	Culture as a Nuisance
Assertion of Power	1:72	Personal interpretation of defendant, even though doesn't speak the language.	Assumption of Non-Effect	Culture as a Nuisance
Assertion of Power	4:99	Don't know what you don't know. Trusting in appearance that culture may or may not play a role, but acknowledged that culture is important.	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	1:16	Attorney should look at it. Have to consider it sometimes, but not all the time? Don't know what you don't know.	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	1:28	Case has to be extreme for this examiner to acknowledge that culture may effect CST.	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	1:29	Culture may not matter, because the bar is low. Culture as a hinderance. Culture is something to overcome or a barrier to be overcome or accomodated.	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	1:30	Need to get the eval done with as few issues as possible. Checking into culture is not routine. It may be "readily apparent."	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	1:38	Same standard regardless of cultural experience.	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	1:60	Opposite of pathologizing culture	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	1:62	Culture doesn't really matter except in interpreting diagnosis.	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	1:66	<u>Labeled</u> as mood unstable, needing medications.	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	2:47	However didn't rise to the level of incompetent.	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	2:52			
Assuming No Effect of Culture	2:85			

Assuming No Effect of Culture	2:87	Reluctance on behalf of the defendant to trust the system. Assumption that it was culture?	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	2:88	Judging the impact of mental illness, but not really considering what would be "normal" in his society. Do we hold defendants to the same benchmark for degree of mental illness that we would hold a dominant cultural individual?	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	2:95	Everyone is just pushed through. Their individual circumstances and culture are ignored. Systemic Ignorance and Systemic Constraints are tied with Microaggression Mechanics.	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	4:16	Assumes that because the defendants were female and cooperative, then there wasn't problems with her assessment with regard to culture or race.	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	4:32	The examiner stated that she usually doesn't see "severe" culture, just mostly language barriers.	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	4:82		Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	4:83	Only if cultural differences is obvious is it looked into as a possible explanation.	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	4:109	Examiner specifically stated that she didn't think the defendant's behavior was culturally influenced.	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	5:73		Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	6:17	Not ignoring culture, but perhaps assuming it doesn't impact the evaluation.	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	6:36	derailed... culture as outside or in addition to the CST question... Again need to separate Culture away from the person to determine competency.	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	7:23	Feels that he has had no experience with challenges of culture. Likely did not recognize them.	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	7:32		Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	7:35	I was wondering about enculturation, such that how acculturated is the client? Sure, they've been here for a while, but how involved are they in mainstream American culture	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	7:40	Sense of insecurity about when culture is important to consider.	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	7:42	Reversed option again	Assumption of Non-Effect	Culture as a Nuisance
Assuming No Effect of Culture	7:46	Back to Case-By-Case.	Assumption of Non-Effect	Culture as a Nuisance
Culture Apart from Competency	1:84	Not gender. Has to be something... didn't recognize cultural difference. Looking for some other explanation.	Assumption of Non-Effect	Culture as a Nuisance
MI Apart from Culture	9:117	Establishing background and context. This is informed by experience and can be a place for insight, as well as miss-steps. Seems to separate Culture from other issues.	Assumption of Non-Effect	Culture as a Nuisance
Seeking other Explanation	1:85	Age vs Culture	Assumption of Non-Effect	Culture as a Nuisance

Seeking other Explanation	2:39	Addressing individual needs as with any evaluation	Assumption of Non-Effect	Culture as a Nuisance
Seeking other Explanation	4:21	Capacity is limited because of MI or something else. Not cultural.	Assumption of Non-Effect	Culture as a Nuisance
Seeking other Explanation	4:85	Presented psychosis determines how much time this examiner spends working on a case.	Assumption of Non-Effect	Culture as a Nuisance
Seeking other Explanation	4:107	Called his bx as intriguing... very sarcastic response, flippant attitude by the examiner.	Assumption of Non-Effect	Culture as a Nuisance
Seeking other Explanation	5:39	Has to make sense, from who's perspective?	Assumption of Non-Effect	Culture as a Nuisance
Seeking other Explanation	8:25	Diagnosis is the most critical piece, without you can't parse out incompetency from someone who just won't with an attorney for example. . Bx manifests as symptoms for a Dx. However, the bx as well as the interpretation of the bx are both culturally bound. Examiner does not mention this consideration.	Assumption of Non-Effect	Culture as a Nuisance
Seeking other Explanation	8:26	Not defining culture here. Some people are hard to work with and not on the same page. Examiner separates out worldview and value systems from culture in an attempt to seek another explanation.	Assumption of Non-Effect	Culture as a Nuisance
Seeking other Explanation	8:36	Binary, has to be either he is or he's faking it because of his cultural experience... Pathologizing and Ignoring at the same time. Confabulating malingering, making assumptions of who he is.	Assumption of Non-Effect	Culture as a Nuisance
Seeking other Explanation	9:68	Might be deflecting from culture and looking at other applications of law. May or may not be accurate or appropriate.	Assumption of Non-Effect	Culture as a Nuisance
Seeking other Explanation	9:138	The decision to invoke accommodations in this statement is made by the examiner.	Assumption of Non-Effect	Culture as a Nuisance
Seeking other Explanation	9:147	Culture is another variable that makes us human. However it is on par with brain dev and other brain issues.	Assumption of Non-Effect	Culture as a Nuisance
Individual Differences	3:45	Possibly a spectrum of acculturation has been suggested.	Assumption of Non-Effect	Culture as a Nuisance
Individual Differences	3:46	Individual variation impacts acculturation.	Assumption of Non-Effect	Culture as a Nuisance
Individual Differences	3:47	Expatriate community implies stronger enculturation.	Assumption of Non-Effect	Culture as a Nuisance
Individual Differences	3:49	Investment in culture of origin impacts level of acculturation.	Assumption of Non-Effect	Culture as a Nuisance
Individual Differences	3:62	The narrative of how MI is experienced is steeped in a person's cultural experience.	Assumption of Non-Effect	Culture as a Nuisance
Individual Differences	3:95		Assumption of Non-Effect	Culture as a Nuisance
Individual Differences	4:85	Presented psychosis determines how much time this examiner spends working on a case.	Assumption of Non-Effect	Culture as a Nuisance
Individual Differences	3:59	Examiner acknowledges importance of culture, but applies idea that MI is individual	Assumption of Non-Effect	Culture as a Nuisance

Individual Differences	4:106	Assumed that it was individual and not culturally related. {Would you describe this as a culturally bound }	Assumption of Non-Effect	Culture as a Nuisance
Individual Differences	6:73	The examiner is trying to say that the defendant is an individual from a different culture, but has a difficult time identifying the cultural component and in the next quote defaults to religious beliefs.	Assumption of Non-Effect	Culture as a Nuisance
Individual Differences	8:26	Not defining culture here. Some people are hard to work with and not on the same page. Examiner separates out worldview and value systems from culture in an attempt to seek another explanation.	Assumption of Non-Effect	Culture as a Nuisance
Individual Differences	9:84	Differences in justice systems influence people's understanding of ours. Judging other systems with the view that ours is the best.	Assumption of Non-Effect	Culture as a Nuisance
Individual Differences	9:85	Fails to acknowledge that our own system may in fact be corrupt, or at least not fair or equal.	Assumption of Non-Effect	Culture as a Nuisance
Individual Differences	9:86	Experience and cultural differences influence opinion and how people may react to our system.	Assumption of Non-Effect	Culture as a Nuisance
Individual Differences	4:29	Even though the interpreter who is from the same culture says it's culturally valid, the examiner doubts veracity. May not realize that there were cultural issues. Not apparent	Assumption of Non-Effect	Culture as a Nuisance
Differences as a Problem	2:75	Doesn't know what he doesn't know.	Assumption of Non-Effect	Culture as a Nuisance
Uncertainty	2:76	Is this really the only case the examiner has had, or has he just not recognized that other defendants may have had a similar issue?	Assumption of Non-Effect	Culture as a Nuisance
Uncertainty	2:84	Defendant is interpreting through his cultural lens.	Assumption of Non-Effect	Culture as a Nuisance
Uncertainty	2:86	Examiner recognized that she may not know what it's like for an African American defendant, but is uncertain of how much it really matters.	Assumption of Non-Effect	Culture as a Nuisance
Uncertainty	4:8	Decision making can be difficult. Is it necessary to have a decision before leaving the evaluation?	Assumption of Non-Effect	Culture as a Nuisance
Uncertainty	4:89	Assumptions about what is respectful. Attempting to be aware of cultural differences.	Assumption of Non-Effect	Culture as a Nuisance
Assumption of the Other	2:38		Accommodating Culture	Culture as a Nuisance
Assumption of the Other	1:33	A sense of confusion or apprehension around other cultures and how to interact with a defendant from another culture.	Accommodating Culture	Culture as a Nuisance
Assumption of the Other	2:41	Seems to have a method for how he addresses culture, but it's proprietary and not necessarily a best practice.	Accommodating Culture	Culture as a Nuisance
Assumption of the Other	3:76	Assumes that they have the background to learn to be competent. Even though the examiner acknowledged that we lack culturally sound teaching methods and language translation.	Accommodating Culture	Culture as a Nuisance
Assumption of the Other	4:22		Accommodating Culture	Culture as a Nuisance

Assumption of the Other	4:101	Obviousness of cultural differences was the key for the examiner to identify cultural factors in the eval.	Accommodating Culture	Culture as a Nuisance
Assumption of the Other	6:26		Accommodating Culture	Culture as a Nuisance
Assumption of the Other	8:35	Can you wear his shoes? Made assumptions about him, Don't know what you don't know	Accommodating Culture	Culture as a Nuisance
Accommodating Culture	1:42	Evaluator's sexual identity factored in to the evaluation.	Accommodating Culture	Culture as a Nuisance
Accommodating Culture	1:44	Addressed evaluator's characteristics.	Accommodating Culture	Culture as a Nuisance
Accommodating Culture	1:45	Unable to have a male evaluator. Created conflict...	Accommodating Culture	Culture as a Nuisance
Accommodating Culture	1:47	resented having to do this. M/F conflict.	Accommodating Culture	Culture as a Nuisance
		Curiosity... an openness to know about another culture. Trying to avoid mistakes... constrained by time and resources to try again... Here, we have a positive for accomodating culture... She's trying to know before making an error.		
Accommodating Culture	1:54		Accommodating Culture	Culture as a Nuisance
Accommodating Culture	1:55	She attempts to find out info. Takes the responsibility and initive to try to understand.	Accommodating Culture	Culture as a Nuisance
Accommodating Culture	1:59	Checking out the cultural difference to make sure its not a problem.	Accommodating Culture	Culture as a Nuisance
Accommodating Culture	1:60	Culture as a hinderance. Culture is something to overcome or a barrier to be overcome or accomodated. It's almost as if culture is a confound, rather than a way of being. Something that can be seperated from mental illness.	Accommodating Culture	Culture as a Nuisance
Accommodating Culture	1:61		Accommodating Culture	Culture as a Nuisance
Accommodating Culture	1:62	Need to get the eval done with as few issues as possible. Can't rely on the professional definition of the DSM, it may not apply to the person of a different culture. Examiner acknowledged that the culture influences presentation and must avoid pathologizing culture.	Accommodating Culture	Culture as a Nuisance
Accommodating Culture	3:16	How do we define "more different a culture is"?	Accommodating Culture	Culture as a Nuisance
Accommodating Culture	3:69		Accommodating Culture	Culture as a Nuisance
Accommodating Culture	4:34		Accommodating Culture	Culture as a Nuisance
		Examiner has had experience with defendants of different cultures, and suggests that you have to separate out cultural bound bx. Have to look at different "levels."		
Accommodating Culture	5:19		Accommodating Culture	Culture as a Nuisance
		Need a checklist... relying on experience with other cultures to develop a checklist, not specific to culture of defendant.		
Accommodating Culture	7:15		Accommodating Culture	Culture as a Nuisance
Accommodating Culture	8:32	Power perspective, understanding culture is hardwork, it takes "EXTRA WORK"	Accommodating Culture	Culture as a Nuisance
Accommodating Culture	8:35	Can you wear his shoes? Made assumptions about him, Don't know what you don't know	Accommodating Culture	Culture as a Nuisance

Accommodating Culture	9:105	This is an area of contention among examiners. Some don't get the info ahead of time. Regardless it appears that questions come up that need research even if the examiner did research ahead of time.	Accommodating Culture	Culture as a Nuisance
Conflict with the Other	1:43	Examiner has expressed frustration about struggles with defendants who fell persecuted by the system. Again is devaluing the experience.	Accommodating Culture	Culture as a Nuisance
Conflict with the Other	4:64	"Talked at me"- defensiveness about an interaction with an Af Am Male.	Accommodating Culture	Culture as a Nuisance
Conflict with the Other	4:96	Apparently the reflecting did not work so well, since the defendant became more defensive and escalated.	Accommodating Culture	Culture as a Nuisance
Conflict with the Other	4:98	It's hard to see some else's perspective. Can take the shoes off.	Accommodating Culture	Culture as a Nuisance
Conflict with the Other	8:30	What the person is saying.. Language is a barrier, focused on the language itself, not the cultural meaning. Something that has to be overcome, rather than understood.	Accommodating Culture	Culture as a Nuisance
Language as a Barrier	5:27	Draws on life experience to identify ALL types of ethnicities and cultural identities. Is there a danger of incorrect assumptions by being too aware of differences?	Accommodating Culture	Culture as a Nuisance
Language as a Barrier	8:14	Working or relying on interpreters doesn't always work well. Sense of annoyance and preference to not have to use them.	Accommodating Culture	Culture as a Nuisance
Tolerance/Inclusion of the Other	1:13	It's just harder. Doesn't know how exactly, but it's harder. A sense of uncomfortability and uncertainty.	Frustration	Emotionality
Frustrating	2:62	Examiner is apparently very frustrated with the lack of professional/competency of interpreters.	Frustration	Emotionality
Frustrating	4:11	Exasperation with interpreters is worse with regard to use of language and court terminology. (Look into interpreter roles and impact on understanding)	Frustration	Emotionality
Frustrating	4:12	Here the examiner continues to identify problems she has had with interpreters and then blames them for not understanding what the examiner needs from them.	Frustration	Emotionality
Frustrating	4:13	"All this cultural stuff... crap" Frustration of what to do. Examiner creates a Binary Choice (either the cultural difference is so extreme that it completely impacts the evaluation, or it's not). Doesn't recognize a possible spectrum.	Frustration	Emotionality
Frustrating	4:33	Multiple variables here. A feeling of being overwhelmed, exasperated, confused, and concerned for reaching the correct conclusion.	Frustration	Emotionality
Frustrating	4:39		Frustration	Emotionality
Frustrating	4:65		Frustration	Emotionality

Frustrating	4:89	Decision making can be difficult. Is it necessary to have a decision before leaving the evaluation?	Frustration	Emotionality
Frustrating	4:99	Examiner became frustrated with the evaluation, didn't know how to progress once her clinical skill attempt at reflection failed, and ultimately gave up.	Frustration	Emotionality
Frustrating	4:100	The examiner recognized that she was unable to understand the perspective of the defendant, and even began to take ownership.	Frustration	Emotionality
Frustrating	4:102	Examiner gave up trying to connect with the defendant. Examiner tried to explain that she feels that she is usually able to establish rapport with defendants, but in this case he wasn't willing to accept it. Note: Examiner feels she is trying to "protect" the defendant... this is a very paternal/power perspective.	Frustration	Emotionality
Frustrating	4:103	Examiner expressed frustration and almost irritation that she was unable to reach the defendant. But the sense is that it was his fault that she didn't reach him.	Frustration	Emotionality
Frustrating	4:104		Frustration	Emotionality
Frustrating	6:42		Frustration	Emotionality
Frustrating	6:54	Examiner was clearly frustrated when speaking.	Frustration	Emotionality
Frustrating	3:77	Examiner appeared befuddled and uncertain about his own methods.	Frustration	Emotionality
Frustrating and Confusing	1:14	Annoyance with waiting for interpreter of unusual language for the region.	Annoyance	Emotionality
Annoyance	1:20	Exasperated that it took so long. Language barrier caused time delay.	Frustration	Emotionality
Exasperated	7:41	Nervous laughter (sense of discomfort). Reversed initial statement of case-by-case, to say that it probably should be every case.	Discomfort	Emotionality
Discomfort	7:42	Reversed option again	Discomfort	Emotionality
Discomfort	8:71	Culture is important and he's glad someone's doing something about it. Wants the guidance, but there is a sense that the topic may be overwhelming.	Discomfort	Emotionality
Relief	5:46	Focus is on genuine MI or culture, in that somehow MI is not tied to culture. Was glad that his cases didn't involve significant cultural differences.	Surprise	Emotionality
Relief	5:63	"Really got an Accurate Picture" This was a white male defendant, who was deaf. How does a subculture within the dominate culture impact?	Surprise	Emotionality
Shocked	9:128	Jurisdictional difference? Different state laws? Lack of Best Practice?	Surprise	Emotionality
Culture Impacts MI	2:6	Limited experience, or so the examiner assumes. May not have looked for cultural differences in people who look or speak similarly to the examiner.	Culture Impacts MI	Cultural Impact on Dx
Culture Impacts MI	3:63	Examiner relayed a story in which prior patients of his used a local folklore to describe MI.	Culture Impacts MI	Cultural Impact on Dx

Culture Impacts MI	3:64	Examier draws distinction between local custom/lore, and that it appears differently for those with MI. Interpreter was relied on to determine what was "normal" for the individual's culture given location, time, and experience vs. what the individual was demonstrating.	Culture Impacts MI	Cultural Impact on Dx
Culture Impacts MI	3:87	First hand account of the interview changed the way that the examiner thought about a piece of Cambodian history and culture, causing him to reassess previously held beliefs,	Culture Impacts MI	Cultural Impact on Dx
Culture Impacts MI	3:90	Confusion and a need to parse out MI or defect from Culture seems to arise often, when perhaps the impact of the MI or defect needs to be reconceptualized through the cultural lens.	Culture Impacts MI	Cultural Impact on Dx
Culture Impacts MI	6:27	Culture can influed the appearance of MI. Danger of pathologizing culture. Cultural exploration is important. What they say may sound weird, so it must be delusional.	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	2:13	Absence of what would be consider delusional by our standards, may in fact be indicative of Mental Illness when considering cultural factors.***	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	2:14	Trying to avoid pathologizing culture. Trying to interpret MI inlight of cultural difference.	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	2:48	A sense of confusion or apprehension around other cultures and diagnosis of someone from another culture..	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	2:49	Culture doesn't really matter except in interpreting diagnosis.	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	2:51	Judging the impact of mental illness, but not really considering what would be "normal" in his society. Do we hold defendants to the same benchmark for degree of mental illness that we would hold a dominant cultural individual?	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	2:88	Examiner was trying to avoid pathologizing culture.	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	3:56	Examiner was considering that culture could impact presentation of MI.	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	3:57	Described culture as a wrapper. May suggest something that can be taken off or put on.	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	3:58	Examiner acknowledges importance of culture, but applies idea that MI is individual	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	3:59	Prior examiners sometimes get it wrong. In this case the examiner identified this issue, but how many times is it not caught?	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	3:60		Culture Impacts MI	Cultural Impact on Dx

Dx & Culture	3:61	Presentation makes sense when examined through the defendant's cultural lens. Describes culture as a wrapper.	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	3:68	Examiner acknowledges that cultural norms v abnormal mental state need to be determined, but then states that it applies when a patient is from another culture. How is he defining a different culture? Different from who?	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	3:70	DSM description is not applicable for everyone. Culture can make MI look different.	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	5:7	So, based on what you were talking about with respect to symptomology, how does culture impact the evaluation? (clarifying question)	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	5:46	Focus is on genuine MI or culture, in that somehow MI is not tied to culture. Was glad that his cases didn't involve significant cultural differences.	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	5:48	Psychosis first, if no psychosis as defined by psychology then look at culture.	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	5:72		Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	5:78	The examiner is asserting that the defendant must his culture to meet the justice system's requirements of competency.	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	7:10	Have to be careful around culture.	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	7:18	Diagnosis is most critical. Have to determine how culture impacts dx first before considering competency.	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	7:51	Self-awareness about not wanting to pathologize a culture, but then makes assumptions about what might be culturally normal.	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	7:62	Examiner alludes to the need to be self-aware to be able to consider how someone else's culture might impact Dx.	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	8:18	Culture has a "huge part" in diagnosis.	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	8:21	Culture is important for both Dx and Competency.	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	8:25	Diagnosis is the most critical piece, without you can't parse out incompetency from someone who just won't with an attorney for example. . Bx manifests as symptoms for a Dx. However, the bx as well as the interpretation of the bx are both culturally bound. Examiner does not mention this consideration.	Culture Impacts MI	Cultural Impact on Dx
Dx & Culture	9:107	Language was identified as major issue, but not acculturation...	Culture Impacts MI	Cultural Impact on Dx
Culture as a Variable	9:146	Culture is something that must be understood, but is just one variable. The examiner reversed direction on his focus on culture as the main underlying issue, to it being just one variable.	Culture as a Variable	Cultural Impact on Dx